



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

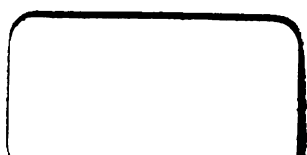
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



JEN  
JAP  
CTK





**REPORTS OF CASES**  
**DECIDED IN THE**  
**COURT OF COMMON PLEAS**  
**ON**  
**APPEAL**  
**FROM THE**  
**Decisions of the Revising Barristers.**

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

11.

12.

13.

14.

15.

16.

17.

REPORTS OF CASES

*11. 2. 46*  
DECIDED IN THE

COURT OF COMMON PLEAS

ON

APPEAL

FROM THE

**Decisions of the Revising Barristers.**

---

BY

GILLERY PIGOTT, ESQ.

AND

HUNTER RODWELL, ESQ.

OF THE MIDDLE TEMPLE, BARRISTERS AT LAW.

*11. 2. 46*  
11. 2. 46

LONDON:

HENRY BUTTERWORTH, FLEET STREET,  
Law Bookseller and Publisher;

HODGES AND SMITH, GRAFTON STREET, DUBLIN.

1846.

**269747**

**LONDON:**

**PRINTED BY C. ROWORTH AND SONS, BELL YARD,  
TEMPLE BAR.**

269747 1911

A

**TABLE OF CASES**  
**REPORTED IN THIS VOLUME.**

---

A.

	PAGE
Alexander and Newman .....	277
Allen and House .....	146
Allen and Waterhouse.....	58
Ashmore and Lees .....	267
Autey and Topham .....	3

B.

Bartlett and Gibbs .....	46
Barton and Ashley .....	203
Baxter and Newman .....	182
Beswick and Ashworth .....	294
Beswick and Aked .....	294
Bishop and Helps .....	220
Bishop and Smedley .....	233
Bushel and Luckett .....	260

C.

Colvill and Wood.....	305
Coogan and Luckett .....	294

	PAGE
Cook and Luckett .....	241
Cooper and Harris . . . . .	100
Croucher and Browne .....	236
Cuming and Jones .....	135

## D.

Daniel and Camplin.....	195
Daniel and Coulstring.....	162
Davis and Waddington .....	120
Dewhurst and Fielder .....	166
Dobson and Jones .....	65
Dyer and Gough .....	152

## E.

Eckersley and Barker .....	82
----------------------------	----

## F.

Flounders and Donner .....	246
----------------------------	-----

## G.

Gadsby and Barrow .....	94
Gadsby and Warburton .....	77

## H.

Hinton and Hinton .....	179
Hinton and Town Clerk of Wenlock .....	106
Hitchins and Brown .....	209
Hoyland and Bremner.....	265
Hughes and Overseers of Chatham .....	35

## J.

Jeffrey and Kitchener .....	158
Judson and Luckett.....	300

## K.

Knowles and Brooking .....	PAGE 311
----------------------------	-------------

## L.

Luckett and Bright .....	254
Luckett and Knowles .....	257

## M.

Marshall and Bown .....	87
Moss and Overseers of St. Mary, Lichfield .....	116
Murray and Thorniley .....	336

## N.

Nettleton and Burrell .....	115
Newton and Hargreaves .....	298
Nunn and Denton .....	102

## P.

Pariente and Luckett .....	250
Pitts and Smedley .....	107
Pruen and Cox .....	214

## R.

Rawlins and Bremner .....	294
Rawlins and Overseers of West Derby .....	220
Riley and Crossley .....	294

## S.

Score and Huggett .....	149
Simpson and Wilkinson .....	1, 128

## T.

	PAGE
Thornley and Aspland .....	294
Toms and Cuming .....	140
Tudball and Burges .....	14

## W.

Walker and Payne .....	207
Wansey and Perkins (Hill's vote) .....	151
Wansey and Perkins (Lockey's vote) .....	170
Wansey and Perkins (Quigley's vote) .....	173
Webb and Overseers of Aston .....	5
Whithorn and Town Clerk of Tewkesbury .....	109
Whitmore and Town Clerk of Wenlock .....	17
Wood and Overseers of Willesden .....	216
Wright and Town Clerk of Stockport .....	21
Wills and Adey .....	336

---

DIRECTIONS TO THE BINDER.

Cancel pages 61, 62, 63 and 64, and substitute those given with the Third Part.



C A S E S

DECIDED IN THE

COURT OF COMMON PLEAS

ON

APPEAL

FROM

THE REVISING BARRISTERS.

1849.

SIMPSON, *Appellant*, and WILKINSON, *Respondent*.

*Monday,*  
*Nov. 6.*

**CLARKE**, Serjt., applied to the Court to enlarge the time for lodging with the Master the notice required by 6 Vict. c. 18, s. 62 (*a*), on the part of the appellant. He produced an affidavit, made by the agent of the attorney in the country, stating "that he had by that morning's post received the statement of grounds of appeal, but not the notice required to be given to the masters signed by the appellant." The notice may be treated as a mere matter of form, so long as the statement (*b*), which is the material part, has been filed.

The Court will not enlarge the time for giving notice of appeal to the Masters, as directed by 6 Vict. c. 18, s. 62, even though an application be made for that purpose within the four first days of term.

(*a*) "Every appellant, who shall intend to prosecute his appeal, shall within the first four days in the Michaelmas Term next after the decision to which such appeal shall relate, transmit to the masters of the said Court of Common Pleas the statement in writing signed by the revising barrister, and shall also therewith give or send a notice, signed by him, stating therein his intention to prosecute the appeal. And the said appellant shall also give or send a notice signed by him to the respondents in the said appeal, stating his intention duly to prosecute such appeal in the said Court."

(*b*) The statement of the case by revising barrister, *supra* (*a*).

1843.  
 SIMPSON  
 and  
 WILKINSON.

Sect. 64 provides, "that if it shall appear to the Court that there has not been reasonable time to give or send such notice in any case, it shall be lawful for the said Court to postpone the hearing of the appeal in such case, as to the Court shall seem meet." This section would seem to include the present case.

The application was granted.

But on a subsequent day it was intimated by the Court, that the appeal must be struck out, the attention of the Court not having on the previous occasion been directed sufficiently to the words of the Act (a).

*Byles*, Serjt., attempted to distinguish the case from *Autey* and *Topham* (b), on the ground that the application was made within the first four days of term. The affidavit filed at the time ought to be treated as a notice; and the signature of the agent must be deemed sufficient, as it is not necessary to construe the words "signed by him," in sect. 62, as if they were signed by the appellant's own hand.

*Per Curiam* (c).

The necessary notice has not been given; and the Court are of opinion that they have no jurisdiction to entertain the appeal.

The appeal was accordingly struck out.

(a) Sect. 64.

(b) Vide the next case.

(c) *Tindal*, C. J., *Coltman*, *Erskine*, and *Maule*, JJ.

1843.

AUTEY, *Appellant*, and TOPHAM and another,  
*Respondents*.

*Tuesday,*  
*Nov. 7.*

**THIS** was an appeal from the decision of the revising barrister for the borough of Leeds, which the master of the Common Pleas had refused to enter, upon the ground that no notice had been transmitted to him in compliance with the provisions of 6 Vict. c. 18, s. 62, which enacts "that every appellant intending to prosecute his appeal shall, within the four first days in the Michaelmas term next after the decision to which such appeal shall relate, transmit to the masters of the Court of Common Pleas the statement in writing, so signed by the revising barrister as aforesaid, and also therewith give or send a notice signed by him, stating his intention therein to prosecute the said appeal, &c. And one of the masters of the said court, to be nominated for that purpose by the Lord Chief Justice of the said Court, shall forthwith enter every appeal of which he shall have received due notice from the appellant as aforesaid, in a book to be kept for that purpose." And sect. 64 enacts, that "no appeal or matter of appeal whatsoever shall in any case, except where the conduct and direction of the appeal or of the answer thereto shall have been given by order of the Court of Common Pleas, or of any judge thereof, to any person, be entertained or heard by the said Court, unless notice shall have been given by the appellant to the masters of the said Court at the time and in the manner therein-before mentioned."

Sect. 62 of 6 Vict. c. 18, requiring notice of appeal to the masters within the four first days of term is not merely directory. The delivery of the notice is a condition precedent to the right of appeal, and a waiver of the objection by the respondent will not cure an omission to give it.

*Shee*, Serjt., upon the fifth day of term, applied for leave to enter the present appeal, upon the ground that

1843.

AUTY  
and  
TOPHAM  
and another.

the appellant was not aware of the necessity of giving notice of appeal to the master. He suggested that the provisions of the above sections were directory only; and that it was competent for the Court to order the master to enter and receive the appeal. The respondents were equally anxious to obtain the opinion of the Court, and would waive any objections with regard to the want of notice.

*Dowling*, Serjt., for the respondents, offered no opposition to such a course.

TINDAL, C. J.—Authority has been given to this Court to review the decisions of the revising barristers; and the circumstance of a jurisdiction having been transferred from another tribunal to us, should make us careful that we do not assume a jurisdiction not given by the statute. I think we have no power to grant the present application; and that the exceptions in the Act do not apply in this instance. Had sect. 62 stood alone, it might, perhaps, have been reasonably contended that the words were merely directory; and that, therefore, the objection of a want of notice might be waived upon the part of the respondents; but the terms of sect. 64 compel me to think, that the provision therein contained must operate as a condition precedent to the reception of the appeal; and, unless complied with, this Court has no jurisdiction to direct an entry.

MAULE, J.—The notice of appeal required by sect. 62 is analogous to a writ of error from an inferior to a superior Court; and, unless that writ is sued out, the latter Court can have no jurisdiction. Unless this notice

be given within the time prescribed, this Court has none.

1843.

AUTY  
and  
TOPHAM  
and another.

COLTMAN and ERSKINE, JJ. concurred.

Application refused.

WEBB, *Appellant*, and OVERSEERS OF ASTON, &c.  
*Respondents*.

THIS was an appeal from the decision of the revising barrister, who had retained upon the County Register a qualification for property situated within a borough under the following circumstances (a).

William Hickman was the lessee of a term originally created for ninety-nine years, of which three years had expired. The lease comprised several houses, the aggregate annual value of which was 220*l*. All the property was situate within the parish of Aston juxta Birmingham, and also within the borough of Birmingham; one house was worth more than 10*l*. a year, and the remainder were respectively worth less than 10*l*. a year; each house was occupied by a distinct tenant, and in no case was any land occupied jointly with a house. The particulars of his qualification were stated to be "Lease of houses and buildings for years." He was examined, and stated that he relied upon those which individually would be worth less than 10*l*. a year, but collectively were worth more than that amount. It was contended on the part of the objector that under 2 Will. 4, c. 45, s. 25, William Hick-

H. was lessee of several houses within the borough of Birmingham for a term originally exceeding sixty years; one of the houses was of the yearly value of 10*l*., the others were respectively worth less, but collectively exceeded that sum. For the house worth 10*l*. per annum he had a vote for the borough.

Held, that in respect of the others he was entitled to a county vote by sect. 20 of the Reform Act, and that sect. 25 did not affect such claim.

(a) The case was sent back to be restated in two particulars. Vide post, p. 6.

1843.

WEBB  
and  
OVERSEERS OF  
ASTON, &c.

man had no right to a county vote, because one of the houses comprised in the lease was of sufficient annual value to confer upon the occupier a vote for the borough of Birmingham, that the county vote was given in respect of the estate and interest which William Hickman had as lessee, that he was seised not properly of the land but of the term for years, which is the estate and interest that passeth for that time, that the term of years was an entirety, extending over the whole property comprised in the lease, and inasmuch as it comprehended the house of 10*l.* annual value, the case came within sect. 25 of the act. The revising barrister held that as it is said in sect. 20 of the act "every person who shall be entitled as lessee to any lands for the unexpired residue of any term shall be entitled to vote," and not "who shall be entitled to the unexpired residue of any term," &c.; that the word "term" was used in its popular sense as applicable to "time" rather than in its legal sense, and the more so as the word "term" is not used in sect. 25, and that the claim here was for property to which "he is entitled as lessee for the term" (or time), and which does not confer a vote for the borough, and which therefore does not disqualify him from being on the county register.

The following was the additional statement of the barrister.

I do find that the residue (*a*) of the houses respectively under 10*l.* were proved to be together of the clear yearly value of not less than 10*l.* over and above all rents and charges payable out of or in respect of the same, and I do find that the said William Hickman had been in receipt of the rents and profits thereof to his own use twelve calendar months previous to the last day of July preceding.

(*a*) All the houses mentioned in the case except one.

*F. Robinson* for the appellant. The present question turns on the 25th section of the Reform Act, which enacts, "that no person shall be entitled to vote in the election of a knight of the shire, in respect of his estate or interest as a copyholder, or customary tenant, or tenant in ancient demesne, holding by copy of Court-roll, or as such lessee (a), or assignee, or as such tenant or occupier in any house, &c., such house, &c. being of such value as would confer on him, or on any other person, the right of voting for any city or borough." The present claimant is a leaseholder possessed of the residue of a term in several houses within the borough of Birmingham; only one of them is of sufficient value to confer a borough vote, and he claims to vote for the county in respect of the residue. The legislature has not touched upon this point, but clearly the intention was to exclude persons so situated, as is plainly indicated by the debates on the point in the House of Commons; and in Elliott, p. 135, Lord Brougham is represented to have said in the debate on the Reform Bill (b), "The 25th section deals with the rights now conferred for the first time, viz., copyholders, who hitherto had no right, and leaseholders who now acquire it for the first time; accordingly they are deprived of the right of voting for the county in respect of property in the borough, or rather they have it not: this 25th clause prevents them from acquiring it." Perhaps, however, it may be necessary now to argue on the words of the statutes themselves. The franchise is conferred in respect of the estate or interest that a person has in the term, and the word "term" can in no sense be taken to mean "time." It is used in a strictly legal sense (c), and according to that the claimant is not entitled to a county vote.

1843.

---

WEBB  
and  
OVERSEERS OF  
ASTON, &c.

(a) Referring to sect. 20. (b) Mirror of Parliament, 24th May, 1832.  
(c) Co. Lit. 45, and 2 Black. 144.

1843.

WEBB  
and  
OVERSEERS OF  
ASTON, &c.

The time and duration of enjoyment is not regarded, as is apparent from the 20th section, which gives a vote alike to those possessed originally of a term of sixty and twenty years, and if the former has only one year's interest left he is entitled to vote, though the value of it may be but 10*l.*, whereas the latter, with nineteen years remaining out of twenty, has no franchise, if the annual value be one shilling less than 50*l.* It is thus clear that the value of the estate is of a secondary consideration, and that the term as originally created was the thing really in the view of the legislature. The vote is given *propter dignitatem* of the estate. The proviso in the 20th section supports this view; by it, except where there is an *actual occupation*, a sub-lessee or assignee of any under-lease in either of the said terms of twenty or sixty years is excluded. Nor can two terms be joined to make the value sufficient, the statute speaking only of one. [*Maule, J.* You mean two terms of different premises.] If a term in one set of premises is insufficient, another term of other premises cannot be added to make it up. Then, if two terms cannot be joined to make up the necessary value, neither can you divide one term. An assignee of part of a term has no right to vote. The termor has the franchise in respect of the term, and the term is affected by an assignment of part, as an office is which confers a vote. [*Coltman, J.* If then he assigned part of the premises?] He would lose his right. [*Maule, J.* Yet he would have an estate as lessee, and in the lands.] No doubt he would, but not of the same estate in respect of the term. In construing this 25th section, the intention of the legislature must be held in view, viz. to keep distinct the borough and county voters.

It is said that part of the estate will be unrepresented,



but that argument has no weight, since a freeholder, who occupies a house and land within a borough sufficient for a borough vote is cramped in a similar manner by the provisions of sect. 24, and that, however valuable his land may be. Nothing can show more clearly than this the intention to keep distinct the two classes of qualifications. [*Maule, J.* If a man is tenant in fee of lands, he is so of the whole; so a termor of all parts of the term, and one who has a term of 100 years in ten houses, has that term in each house of the ten.] His claim is made in respect of a term in the whole lease. [*Maule, J.* You cannot bind him to the words of his claim. It is not drawn by a conveyancer.] If this qualification is upheld, a lessee may parcel out a term by assignments, and the proviso of sect. 20, excluding sub-lessees from voting, will be thus defeated. [*Maule, J.* If a man is ejected to the amount of one shilling, and retains an interest to the extent of a thousand pounds, do you say he loses his vote? I understand you to argue that "*term*" comprehends all the interest in the original lease.] Parting from any portion voluntarily would cause a loss of the franchise, but it might be different if the ejectment were upon a title paramount.

1843.

---

WEBB  
and  
OVERSEERS OF  
ASTON, &c.

The freeholder is in no better position; before the act he had a right to vote for the county in respect of property within the borough, and the intention was to restrict the leaseholder even more, the 26th section requiring an occupation of six calendar months only by the former, but twelve by the latter, previous to the last day in July in the year of making the claim.

The true result is, that if any part of the premises gives a borough vote, it cannot qualify for a county

1843.

---

WEBB  
and  
OVERSEERS OF  
ASTON, &c.

vote also. [He abandoned the objection to the sufficiency of occupation.]

*Mellor*, for the respondents, contended that the opinions cited from Elliott were not entitled to weigh with the Court in giving their construction to the Act of Parliament. In opposition to them, he might mention that the revising barristers were in the habit of deciding in favour of the respondent's view. Subtle distinctions and refinements had been drawn, but the words of the act are clear, distinct, and obvious. The vote is given by the 20th section, then the 25th section has no negative words by which it is removed. Where it is requisite to plead the possession of a term, the mode is to aver that "he was possessed of the lands for the term." The lessee having parted with some portion of the thing demised is not therefore less possessed for the term of that which he retains. The argument on the other side goes the length of contending that a lessee of all Belgrave Square would lose his vote by parting from a single house. Here, however, there was in fact no assignment; but it is argued, that because one of the houses confers a borough vote, all the others which do not do so are excluded from conferring a qualification for the county, because they are included in the lease which creates the term in *the one house*. But the words of the act are too plain to admit of such a doctrine. The 20th section is only to be limited by the 25th, which latter has no reference to houses insufficient in value to confer the borough vote. The absence of such words is decisive of the whole question.

TINDAL, C. J.—I think the revising barrister was right in his construction of the statute 2 Will. 4, c. 45.

By sect. 20 of that act, a right is given to the individual in question who falls quite within its words. He is "lessee of tenements for an unexpired residue of a *term* originally created for a period of not less than sixty years, of the clear yearly value of not less than 10*l.* over and above all rents and charges payable out of or in respect of the same." The word "*term*" carries with it the *interesse termini*, and the lessee has an equal interest in the whole and in every part of the tenements originally comprised in the lease. If then he has a right given him by the 20th section, is sect. 25 expressed with sufficient clearness to take away that right? If not, we must hold him still entitled to retain it. That section declares "that no person shall be entitled to vote in the election of a knight of the shire in respect of his estate or interest (among others) as lessee in any house, warehouse, counting-house, shop, or other building, or in any land occupied together with a house, warehouse, counting-house, shop, or other building, such house, warehouse, counting-house, shop, or other building, being either separately or jointly with the land so occupied therewith of such value as would, according to the provisions hereinafter contained, confer on him or on any other person the right of voting for any city or borough." Now the case only states that one of the houses falls within this predicament, the others then are left untouched, and as to them he is still in possession of the term. The restraint is partial only, and applies to those which would confer on him or any other person a right to vote for the borough; then as he claims not in respect of the one house, which being of the value of 10*l.* does give him a vote for the borough, but for the others of which he still retains the possession, I think the claim is good, and that he is entitled to vote.

1843.

---

WEBB  
and  
OVERSEERS OF  
ASTON, &c.

1843.

---

WEBB  
and  
OVERSEERS of  
ASTON, &c.

COLTMAN, J.—I am of the same opinion, and I think Mr. *Robinson's* argument on the 20th section of the act is not to be supported. The party is lessee of the whole and of every part of the premises, and the yearly value mentioned in the act does not tend to show an entirety in the term to be necessary in the way contended for. The rents may be apportionable among all the houses according to the value of each, and this falls within and satisfies the words “payable for or in respect of the same” in the 20th section. So far from the term being entire, it is in its nature apportionable. Then the 25th section, striking out the words inapplicable to this case, is very short, and takes away the right in respect of a house capable of conferring a vote for any city or borough.

ERSKINE, J.—I am of the same opinion. The case states that “Hickman was lessee of a term originally created for ninety-nine years, of which three had expired. The aggregate annual value of the whole was 220*l*. All the property was situate within the borough of Birmingham. One house was worth more than 10*l*. a year; the remainder respectively worth less.” It is not denied that as such lessee the claimant would be entitled to vote for a knight of the shire according to sect. 20; then does sect. 25 take away such right? The circumstance of the property being situate within a borough would not deprive him: and the legislature does not appear to have had such intention. The words of the 25th section are, “no person shall be entitled to vote in the election of a knight of the shire in respect of his estate or interest as lessee or assignee, &c., in any house, warehouse, counting-house, shop, or other building, or in any land occupied together with a house,

warehouse, counting-house, shop, or other building, such house, warehouse, counting-house, shop, or other building, being either separately or jointly with the land so occupied therewith of such value as would confer on him or on any other person the right of voting for any city or borough." If the legislature had meant to deprive in a case like the present, it would have used different language, and introduced "*or several houses together,*" of such value as would confer the right of voting for any borough. This property, however, confers no vote for the borough, and I think sect. 25 is not sufficiently clear to take away the right.

1843.

---

WEBB  
and  
OVERSEERS of  
ASTON, &c.

MAULE, J.—I also think there is a right to vote for the county. There is no argument against the vote except the assumption that the word "term" means an interest in all the premises originally included in the lease creating it. But no authority is cited to support that sense of the word. The language of the revising barrister may have induced the appeal; he says "that the word term was used in the 20th section in its popular sense as applicable to time, rather than its legal sense." I do not think it has such sense legally or otherwise; a person has as much interest in the residue of the term of one house that he retains out of ten, as he had in the nine from which he may have parted. In that respect, therefore, the argument for the appellant fails; that being so, the right exists by virtue of the 20th section, which puts it on the footing of a *quasi* freehold; then is the franchise taken away by sect. 25? it seems to me quite clear that it is not; the vote is claimed in respect of property consisting of houses, each of less value than 10*l.*, and that would not confer any

1843.

WEBB  
and  
OVERSEERS of  
ASTON, &c.

vote for the borough. The revising barrister was therefore right in retaining the name, and not only he, but according to the statement at the bar, all revising barristers have done so before whom the question has ever arisen.

Decision affirmed.

*Mellor* applied for costs under sect. 70 of the Registration Act (6 Vict. c. 18). The respondents are parish officers, and were made parties to the appeal by the revising barrister.

*Per* TINDAL, C. J.—We think it not a case for costs.



TUDBALL, *Appellant*, and BURGESS, *Respondent*.

In a notice of objection under 6 Vict. c. 18, s. 17, the objector must state his qualification with great accuracy, and as it appears on the register. When the objector described himself as "on the list of voters for the parish of C.;" whereas in fact he was on the list of freemen of the city of B., residing in the parish of C. Held such misdescription rendered the notice bad.

THIS was an appeal from the decision of the revising barristers for the city of Bristol. It appeared from the case submitted to the Court, that William Tudball, the present appellant, had objected before the revising barristers to the name of John Jenkins being retained in the list of the freemen entitled to vote for the said city. Notice of objection was proved to have been duly served, which notice was signed, "William Tudball, of Hotwell Road, on the list of voters for the parish of Clifton." The name of William Tudball was not upon either the householders' or freeholders' list of voters for the parish of Clifton, but his name was upon the alphabetical list of the freemen of the city of Bristol, and *there* under the letter T. he and several others were consecutively stated as "All of the parish of Clifton," and were included

in brackets. It was objected on behalf of the said John Jenkins, that William Tudball, instead of stating himself in the notice to be on the list of voters for the parish of Clifton, ought to have stated himself to be on the list of freemen of the city of Bristol, and the revising barristers decided that the notice was insufficient, and retained the name of John Jenkins on the list.

1843.

TUDBALL  
and  
BURGES.

*Cockburn*, for the appellant, contended that the objector had acted strictly in compliance with the provisions of 6 Vict. c. 18, s. 17 (a). No other course than that which the objector has adopted could have been pursued in this instance. The statute gives no form more applicable than that prescribed in Schedule (B.), No. 11 (b). And the latter words, "on the list of voters

(a) That every person whose name shall have been inserted in any list of voters for any city or borough, may object to any other person, as not having been entitled on the last day of July next preceding to have his name inserted in any list of voters for the same city or borough, and every person so objecting shall on or before the twenty-fifth day of August in that year give or cause to be given a notice according to the form numbered (10) in the Schedule (B.), or the like effect, to the overseers, who shall have made out the list in which the name of the person so objected to shall have been inserted in the list of freemen of any city or borough, except the city of London, then to the town clerk of such city or borough, and every person so objecting shall also give, or cause to be left at the place of abode of the person objected to as stated in the said list, a notice according to the form numbered (11), in the said Schedule (B.), and every notice of objection shall be signed by the person objecting.

(b) *Form of Notice of Objection to be given to Parties objected to.*

To Mr.

I hereby give you notice that I object to your name being retained on the list of persons entitled to vote in the election of members (or a member), for the city (or borough) of

Dated this                      day of                      A. D.

Signed, A. B. (*place of abode*), on the list of voters for the parish of

1843.

---

TUDHALL  
and  
BURGES.

for the parish of Clifton," must be regarded as surplusage, and they will not vitiate the preceding part, which affords all the necessary information to the party objected to. [*Maule, J.* There is in reality no such person as the person purporting to object; the words are applicable to some person, and wrong information would be conveyed to the voter objected to.] He has described himself of the place of abode, which the town clerk who publishes the list of freemen has affixed to his name, and this is as much information as is required.

*Austin*, who appeared for the respondents, was stopped by the Court.

TINDAL, C. J.—This is clearly a case of misdescription. The objector has followed the form given in Schedule (B.) more closely than was necessary. The information afforded is calculated to mislead, and would throw difficulties in the way of the party whose vote was objected to. The decision of the revising barrister was correct.

COLTMAN, ERSKINE, MAULE, JJ. concurred.

Decision affirmed.

---



1843.

WHITMORE, *Appellant*, and TOWN CLERK OF  
WENLOCK, *Respondent*.

THIS was a consolidated appeal from the decision of the revising barrister for the borough of Wenlock, and the following case was stated for the opinion of the Court:—

In the list of persons claiming to vote in the election of members for the borough of Wenlock, in respect of property situate within the parish of Beckbury in the said borough, made out by the overseers of the poor of the said parish on 31st July, 1843, appears the following entry, namely,

Name.	Place of Abode.	Nature of Qualification.	Where situate.
Thomas Charlton Whitmore.	Beckbury Brook.	Building and Land.	Beckbury Brook.

The said Thomas Charlton Whitmore was duly objected to by William Harford, and appeared in support of his vote, and having proved that he was in all other respects a duly qualified voter for the said borough, the only question was, whether the building for which he claimed to vote was sufficient within the statute? The building to which the objection applied consisted of a cow-house or stable, substantially built of stone, the roof of which was tiled, having a door with a lock and key. It was proved also that the building was substantial and suitable for the purpose for which it was erected and used, and conveniently placed for the occupation of the claimant's land.

The revising barrister decided that this building was not one to which the words "other building" in 2

Any substantial building of the yearly value of 10*l.* adapted for habitation, or carrying on business, will confer a borough vote under sect. 27 of the Reform Act, and satisfies the words "other buildings" there used.

Thus a cow-house or stable built of stone, with a tiled roof, having a door with a lock and key, and suitable for the purpose for which it was erected and used, is sufficient within the statute. Semble, a building used for the purpose of the more convenient occupation of land, and not for habitation or trade, would suffice.

1843. Will. 4, c. 45, s. 27, could apply, and expunged the name of the voter, which was to be restored should the Court be of opinion that the building was such as to confer a vote.

---

WHITMORE  
and  
TOWN-CLERK  
OF WENLOCK.

*Austin*, on behalf of the appellant, was proceeding to argue that the enfranchising clause of the Reform Act must have been intended to comprise such a building as that objected to, when he was stopped by the Court, who called upon

*Manning*, Serjt., who appeared for the respondents. The building in this case is not sufficient to satisfy the words of sect. 27 of the Reform Act, by which the right to be registered for a borough is given to "every male person of full age, and not subject to any legal incapacity, who shall occupy within such city or borough or within any place sharing in the election for such city or borough as owner or tenant *any house, warehouse, counting house, shop, or other building* being either separately or jointly with any land within such city or borough or place occupied therewith by him as owner, or occupied therewith by him as tenant under the same landlord, of the clear yearly value of not less than 10*l*." The building confers this right, and it must not be ancillary to the occupation of the land. [*Maule*, J. The case does not show that the building was erected or used for the more convenient occupation of the land, it only states that it was built as a stable or cowhouse, and used as such, and that it was also suitable for the occupation of the claimant's land.] This case then will not determine the question how far a building ancillary to the occupation of land is within sect. 27 of the Reform Act. The building should be *ejusdem generis* with those enu-

merated in sect. 27, to constitute a claim for a borough qualification.

1843.

WHITMORE  
and  
TOWN CLERK OF  
WENLOCK.

In *Sandiman v. Breach* (a), a question arose on the interpretation of 3 Car. 1, c. 1 (b), and 29 Car. 2, c. 7 (c), and it was held that the drivers of stage coaches were not included in the words "*other person or persons*," and per Lord Tenterden, "where general words follow particular ones, the rule is to construe them as applicable to persons *ejusdem generis*."

In *Kitchen v. Shaw* (d) this principle was recognized in the construction of 6 Geo. 3, c. 25, s. 4 (e), by Lord Denman, who says, "Large as these words undoubtedly are when we apply to them the ordinary rules for construing Acts of Parliament, we find ourselves compelled to say that the *other persons* are not all persons whatever who enter into engagements to serve for stated periods, but persons of the same description as those before enumerated ;" and a domestic servant was held not to be included. The same construction ought to be applied here. [*Maule*, J. Do you contend that a livery stable is not a building within the act ?] Perhaps it is if the business of a livery stable keeper is carried on

(a) 7 B. & C. 96.

(b) "No carrier with any horse, nor waggoner with any waggon, nor carman with any cart, nor wainman with any wain, nor drover with any cattle, shall by themselves or any other travel on the Lord's day."

(c) "No tradesman, artificer, workman, labourer, or *other person or persons*, shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's day."

(d) 6 A. & E. 729.

(e) The preamble of 6 Geo. 3, c. 25, s. 4, is thus worded. "And whereas it frequently happens that artificers, calico printers, miners, colliers, keelmen, pitmen, glassmen, potters, labourers, and *others*, who contract with persons for certain terms, do leave their respective services before the terms of their contracts are fulfilled, &c. ; be it further enacted that, if any artificer (followed by the same list as before), or *other person*, shall contract with any person *whomsoever*," &c.

1843.

WHITMORE  
and  
TOWN CLERK OF  
WENLOCK.

there, as that might bring it within the class of buildings contemplated by the legislature.

TINDAL, C. J.—The word building in sect. 27 of the Reform Act is I think satisfied by the stable or cow-house as described in the case now before us. We are told that the buildings must be *ejusdem generis* with those previously enumerated, and I am not prepared to say that it is not so. A bridge, and a drain are both buildings, but they cannot be said to be *ejusdem generis* with the buildings specified in sect. 27, and many others might be mentioned subject to the same observation. I am of opinion, however, that the construction contended for by the respondents would be too limited. Suppose a building were erected for the purpose of enjoying a prospect, it could not be termed a building used for trade or commerce ; still I am disposed to think it would be a building within the terms of this section. But, however that may be, a building like the present, adapted for the carrying on the business of a livery stable or dairy, clearly falls within the generic description.

COLTMAN, J.—I fully concur in the remarks made by the Chief Justice, and see no ground for saying that buildings like the present do not come within the meaning of the act.

ERSKINE, J. — It appears that this building was adapted for carrying on business, and on that ground I think that it is comprised within the general words of sect. 27 ; but I can also imagine cases in which buildings used neither for habitation or trade might fall within the meaning of the act.

MAULE, J.—I think this is a building within the act, although the word must be used with some reservation. Some buildings would undoubtedly, although of considerable value, be excluded; as a garden wall, for example, in addition to the instances already mentioned. Although the act seems to refer to buildings used for trade or habitation, much must depend on the nature of the building itself, for in this case if goods were put into the building it would become a warehouse, if goods were exposed there for sale it would become a shop, yet the building itself would undergo no alteration. This in my opinion clearly falls within the words “other buildings,” and the claimant is entitled to his vote.

1843.

WHITMORE  
and  
TOWN CLERK OF  
WENLOCK.

Decision reversed.

Claimant's name ordered to be inserted on Register.

WRIGHT, *Appellant*, and TOWN CLERK OF STOCKPORT,  
*Respondent*.

THIS was an appeal from the decision of the revising barrister for the Borough of Stockport. The case stated for the opinion of the Court was as follows:—

There is a factory or building belonging to Mr. Elkanah Cheetham, as owner, consisting of four stories or floors in height, which he lets off to a number of different persons for the purpose of cotton spinning. To each of these persons a distinct or separate portion of the building, consisting of one room varying in size, is let at a distinct rent, such rents varying from 10*l.* to 30*l.* per

The exclusive use and occupation of a separate floor or room in a factory will confer a vote upon the occupier, under sect. 27 of the Reform Act. A rate, duly made in manner and form, having the name of the occupier, the premises for which he is

rated, and the rateable value thereof, and the amount of rate, is a sufficient rate within the act, 6 Vict. c. 18, s. 75. When parties are jointly rated, a payment of the whole rate by one is a payment by each.

1843.  

---

WRIGHT  
and  
TOWN CLERK OF  
STOCKPORT.

annum for a room according to its dimensions. In these rooms each tenant has his own machines for spinning, which machines are worked by a power supplied by a steam engine belonging to, and worked by, and at the expence of the landlord, who also finds the main gearing or shafting which communicates such power to the machines.

It is part of the contract with each tenant that the landlord shall supply such power.

Each tenant has the exclusive use of his own room, and has the key to the door thereof. The approach to these rooms is in some instances a common staircase, leading from the entrance to the factory, and upon which staircase the different doors to the rooms open. There is a door to such general entrance but it is never locked or fastened. In other instances the rooms are approached by separate staircases from the ground outside the building, and in others by doors on the ground opening into the factory yard.

It is part of the agreement with each tenant that the landlord is to pay the rates, and the rent is higher in consideration of such payment.

Upon the rate books the landlord and all the tenants appear to be rated jointly in the following form :—

Name of Occupier.	No. of Votes.	Name of Voters.	No. of Votes.	Description of Property rated : viz. whether Lands, Houses, Tithes, Impro- priation, &c. &c.	Name or Situation of Property.	Estimated Extent.	Gross estimated Rental.	Rateable Value.	Rate at Five Shillings in the Pound.	Arrears due.	Total Amount to be collected.	Amount actually collected.	Present Arrears.	Amount not recovered- ble or legally excused.	Empty.
Orchard Street.															
Elkanah Cheetham . Samuel Howard Cheetham . . . William Clayton . Aquilla Tsyler . . Thomas Higham . George Hankinson . Abel Hyde . . . William Platt . Samuel Birch . . James Fisher . . . Peter Bailey . . . William Bunting . James Helme . . . James Hambleton . James Clarke . . . Thomas Bamber . . John Deaville . . . Thomas Anson . .		Elkanah Cheetham and Samuel Howard Cheetham.		<div>Factory, Warehouse, Steam Engines, Steam Pipes, Gearing and Shafting and Gas Pipes.</div>		.....	129 0 0	100 0 0	25 0 0	.....	25 0 0	22 2 6	.....	.....	1 17 6

1843.

WRIGHT  
and  
TOWN  
CLERK OF  
STOCKPORT.

1843.

---

WRIGHT  
and  
TOWN CLERK OF  
STOCKPORT.

The whole of the rate, with the exception of what was allowed for the portions which were empty, was paid up, and had been paid by the landlord in due time.

The points raised for the decision of the revising barrister were :

1st. Whether each of these rooms or floors so held was such a building as under 2 Will. 4, c. 45, s. 27, would confer the right of voting upon its occupier.

2d. Whether there was an exclusive occupation in each such tenant as required by the same clause.

3dly. Whether each of such occupiers was duly rated in respect of such premises occupied by him.

4thly. Whether each such occupier could be held to have duly paid the rate in respect of such his occupation, part of the rate having been foregone in respect of what was empty ; and the whole of what was paid having in fact been paid by the landlord.

Upon each of these points the revising barrister decided in the affirmative, and retained the names upon the list of voters.

*Townsend* for the appellants. As to the first point raised, this is not a building within the act. Nor is it "*ejusdem generis*" with those enumerated. A mill or stable might be contemplated by the words "other building," or a shed built to protect engines, *Brown v. Lord Granville* (a) ; but it must be some distinct or separate erection, and not as here a building let out in parts or portions. [*Maule, J.* This building was let out in rooms.] Yes, a portion of a floor only, so that a cellar or vault would equally suffice. Although a shop and counting house are parts of a building, they are universally recognized as such. Buildings occupied

(a) 10 Bing. 69.



with land seem to have been meant, such as sheds and cowhouses, and not portions or parts of them, otherwise to the words "other buildings" the act would have added "or portion of a building."

1843.

---

WRIGHT  
and  
TOWN CLERK OF  
STOCKPORT.

It may be perhaps conceded that had the occupiers slept in these rooms it would have been their residence, and on that ground they would have been entitled to vote.

It was held in *R. v. Smith (a)* that a booth erected at a fair in which persons slept was a dwelling house for the purposes of burglary, and Coke (*b*) defines *domus mansionalis* as the place where a person sleeps, but this is an artificial construction for the purpose of protection, and cannot be employed to bring the present case within the act. [*Maule, J.* The question here submitted is, whether either the rooms or floors are sufficient.] It appears from the case that there must have been more than one occupant to some one of the floors, but neither rooms nor floors are sufficient to confer a vote. The construction contended for would also lead to much inconvenience, as the lists of voters would be increased to an extent not contemplated by the legislature.

Secondly, the occupation should have been exclusive. There is but one steam engine to the whole building, and no individual has the exclusive use of it or controul over it. The rooms would be of far less value without the engine, so that the occupation of it forms a considerable part of the rent of each occupier. *Rex v. Mellor (c)* must decide this case; it was there held that the standing place of a carding machine for the purpose of being worked by an engine in a mill amounted to a license to use, and could not be treated as a tenement.

Thirdly, each occupier is not duly rated on the face

(a) 1 M. &amp; R. 566.

(b) 3 Inst. 65.

(c) 2 East, 289.

1843.  
 WRIGHT  
 and  
 TOWN CLERK OF  
 STOCKPORT.

of the rate which was made by virtue of 6 & 7 Will. 4, c. 96, the property was not appropriately described, nor the sum properly inserted. It is laid down in Elliot's Election Law, (a) "that in contemplation of law when a house is *separately* divided between several inhabitants and the landlord does not reside in the house, each floor or room so occupied is *domus mansionalis* of each inhabitant. Nor does it appear to be material whether the door over which the party has the exclusive controul opens at once into the air or into a covered way, staircase, or hall. Nor upon principle could it make any difference, that for additional security there is a further outer door, with a key common to all the inhabitants. The same principle would apply when the house is divided into shops, counting houses, or warehouses." *Fenn v. Grafton* (b), and *Monks v. Dykes* (c), illustrate the distinctions here pointed out.

There is no sum charged as the gross amount of rental against each occupier, but 129*l.* against the whole number. He cited *R. v. St. Olave* (d), and *R. v. Corhampton* (e). The latter case decides that it is enough if the rateable sum due from each party can be gathered from the whole rate, hence it ought to appear somewhere. It does not appear in what proportion these tenants pay in respect of their separate rooms, and such omission makes

(a) 2nd edition. 156.

(b) 2 Bing. N. C. 617.

(c) 4 M. & W. 567.

(d) Burroughs, S. C. (789), reported as *R. v. Warblington*. This case was upon a pauper's settlement whose name was inserted in a church rate but no sum appended to it, the rate was so cast up and no demand for payment made at that time. In the following year, the same churchwarden being continued in office, demanded and received of the pauper the sum of 1*s.* 6*d.*, and on the same day inserted that amount in the rate. The Court held this to be no rate.

(e) Doug. 599.

this rating bad. By the Parochial Assessment Act (a), no rate is to be of any force unless made on the gross estimated rental.

1843.

---

WRIGHT  
and  
TOWN CLERK OF  
STOCKPORT.

The overseers have a right to see from the rate at what sum each person is assessed, in order to determine whether they should include him in the list of voters, and the revising barrister has a right to inspect the assessment to ascertain if the value be 10*l*. This rate could afford no information or assistance. He referred to the schedule of the act (b), and contended that the prescribed form should be followed, in which there are no blanks.

The amount of rate at which each party is assessed must appear opposite to each name, in order to enable parties aggrieved to appeal. There is not on the face of the rate any specific description of the building which each person held, such description is necessary to enable the overseer to discover whether the voter had changed his residence. [*Maule, J.* You do not mean that the number of a house in a street need be given?] Certainly; and when there is no number, then some accurate description for the purposes of identification (c). None of these eighteen occupiers are charged as separate but as joint occupiers, which at all events is calculated to mislead. Then, as to the last point, the nonpayment of the rates. Payment of rates is a condition precedent to the right of voting (d), and as the payment of rates by a landlord will not confer a settlement on the tenant, *R. v. South Kilvington* (e), *a fortiori* it will disqualify the tenant from voting. From the case it appears that the landlord consolidates the whole, and pays the rates on all the tenements, then the

(a) 6 &amp; 7 Will. 4, c. 96, s. 1.

(b) 6 &amp; 7 Will. 4, c. 96.

(c) *R. v. Dodworth*, Fa. & F. Elect. Cas. 276.

(d) 2 Will. 4, c. 45, s. 27.

(e) *Post*, p. 30, note (g).

1843.  


---

 WRIGHT  
 and  
 TOWN CLERK OF  
 STOCKPORT.

full amount ought to have been paid, and no excuse for nonpayment can be allowed. The amount of the whole rate is 25*l.*, of which 23*l.* 2*s.* 6*d.* only is paid; one room is vacant, but the rate should have been paid for that notwithstanding, because it is assessed; if the part empty should not have been included, there was a remedy by appeal. When a rate is once allowed, it becomes payable. These persons have evaded the Parochial Assessment Act, for as long as the mill was even partially occupied all rates should have been paid. [*Coltman, J.* Cannot the magistrates remit in any case?] In case of poverty under the provisions of 54 Geo. 3, c. 170, s. 11. This point is discussed in Elliott's Election Law (a).

*Welsby* for the respondents. The objections are not tenable, first, the building is sufficient, the act intended portions of buildings to suffice if "*ejusdem generis*" with the buildings mentioned, and would include such an occupation as the present, in which the party carries on a visible trade, and which is calculated to give him an interest in the affairs of the borough. If a room occupied for the purpose of residence is a dwelling-house, surely the same room occupied for the purposes of trade is a building within the words of the act. In *Brown v. Lord Granville*, Tindal, C. J., says "other buildings constitute *nomen generalissimum*," and the effect of the ruling in that case was to impose a tax, *à fortiori* the same words will be held sufficient to confer a right. As to the second point, the case does not show that the steam engine was within the building at all or formed a part of the mill, it is only stated that the landlord contracted to supply the power, what that power was is immaterial, for otherwise it might be contended that a stream of water being common to several mills would

(a) 3rd edit. p. 194.

preclude an exclusive occupation of those mills. It is agreed that the use of the room was exclusive, and the joint use of the steam power cannot destroy such exclusive occupation.

1843.

---

WRIGHT  
and  
TOWN CLERK OF  
STOCKPORT.

With regard to the third point, admitting that the parties are "not duly" rated, the question here is not one relating to informality, but simply whether this rate is sufficient within the meaning of the Reform Act, and in this respect the present case is not analogous to *R. v. St. Olave*. A rate may be good though not in accordance with the form given in the Parochial Assessment Act (a). Section 30 of the Reform Act gives the occupier a right to claim to be rated, and to tender the amount of rate; he can do no more, and the overseer is bound to insert his name. The inspection of the rate books in order to assist the revising barrister is rendered unnecessary by the provisions contained in 6 Vict. c. 18, s. 35 (b), and as the qualification does not arise out of the rate it is enough if the premises are sufficiently rated for the purpose of identification. The payment of rates is merely required to prove ability in the occupier, and must be looked upon as an incidental restriction, the right of voting being derived from the occupation of the tenement.

Fourthly. The payment is constructive by the hands of the landlord, and would suffice according to Kenyon, C. J., in *R. v. Weobly* (c). So in *R. v. Cozens* (d), a

(a) *R. v. Fordham*, 11 A. & E. 73.

(b) "Every revising barrister shall have power to require any assessor, collector of taxes, or other officer, having the custody of any tax, assessment, or duplicate, or any overseer or overseers of a past year, or other persons having the custody of any poor rate of the then current or any past year, or any relieving officer, to attend before him at any court to be holden by him in pursuance of this Act, and they shall attend and answer upon oath all such questions as such barrister may put to them."

(c) 2 East, 68.

(d) Doug. 410.

1843.

WRIGHT  
and  
TOWN CLERK OF  
STOCKPORT.

tender by the landlord of a tenant's rate was held a good tender, and on the same principle the payment is good.

He cited *R. v. Bridgwater* (a), and *R. v. Axmouth* (b), in support of this view, and referred to the following passage in Rogers on Elections (c), "A question has often arisen whether the payment of rates by the landlord by an arrangement between him and the tenant, the latter being the party rated, and that he should pay an additional rent in respect of the landlord paying the rates, is a sufficient payment by the tenant under s. 27. It would certainly seem to be so; the debt is the debt of the tenant, and the parish has no remedy against any but him, whoever therefore pays the rate by so doing discharges the debt due from the tenant; it is therefore a payment for his benefit, the decisions on settlement cases accord with this view." The fact of the whole assessment not having been paid goes to show a payment by the tenants, for otherwise the landlord would have paid the whole, whereas the vacant rooms do not pay their proportion, and for the purposes of this Act it must be perfectly immaterial whether the payment was made by the hand of the tenant or through the landlord by an increase of rent.

*Townsend* in reply, stated that the Court of Queen's Bench had (d) overruled the decisions relied upon as establishing that the payment by the landlord was equivalent to payment by the tenant in settlement cases, and directly contravening the opinions expressed in Rogers's Election Law. The due payment is equally a condition prece-

(a) 3 T. R. 550.

(b) 8 East, 383.

(c) 6th edit. 191.

(d) 13 Law Journ. New Series, Mag. Cases, page 3.

dent to the gaining a settlement, and to the right of voting; the words used in 4 & 5 Will. 4, c. 76, s. 66, and in sect. 27 of the Reform Act, are not distinguishable, and must bear the same interpretation. The rating being collective, the whole rate should have been paid, and the occupier should have applied to have had his name inserted in the rate, "*in respect of the premises,*" which latter words require particularity. Had these buildings been treated as separate and distinct occupations, the remission for vacant rooms would have been right; as it is, the payment is insufficient, and the rate invalid.

1843.

---

WRIGHT  
and  
TOWN CLERK OF  
STOCKPORT.

*Cur. adv. vult.*

TINDAL, C. J.—The first question submitted for our decision by the revising barrister is, whether each of the rooms or floors held in the manner described in the case was such a building as, under sect. 27 of the Reform Act, would confer the right of voting upon its occupier; and we are of opinion that each of the rooms held in the manner described was such a building as to confer the right of voting on its occupier. It is called in the case a room, it is described as a distinct or separate portion of the factory, and each tenant is stated to have the exclusive use of his own room, and to have possession of the key of the door. And we think that such a description, or such a mode of occupation, brings it as much within the meaning of the word "building," as "shop," "warehouse," or "counting-house," expressly specified in the act. The second question is, whether there was an exclusive occupation by each of such tenants as required by the same clause. And to this question we answer, that the finding of the revising barrister in the case to which which we have before

1843.

---

WRIGHT  
and  
TOWN CLERK OF  
STOCKPORT.

adverted, appears to us to put an end to any doubt on the point, for the case finds that each tenant has the exclusive use of his room, and has the key of the door; and it does not appear to us that the landlord's engagement to supply steam power communicating with each room, in order that the tenant may work his own machine therewith, makes the occupation of the room itself by the tenant less exclusive than if there had been no engagement. It seems to have no further bearing upon the question of exclusive occupation than if the landlord in the agreement for the taking had contracted to furnish manual power for the service of the occupier in his trade or business carried on in each separate room, or had contracted to provide a light in such situation that it would have illuminated equally all the rooms; observing, that in the statement before us, no question is raised as to the sufficiency of the annual value of the room itself, without the steam power, for the purpose of conferring the vote, whatever bearing it might have upon the case. The third question submitted is, whether each of such occupiers were duly rated in respect of such premises occupied by him. In answer to which question it is in the first place to be observed, that all the act requires is, that the person claiming the right to vote shall have been rated "in respect of such premises to all rates for the relief of the poor." The object of this provision of the act appears to be, that additional evidence should be thereby furnished of the actual occupation by the claimant during the twelve months made necessary by the act; with this object in view, we think it never was intended by the legislature that the rate, in order to be sufficient for the purposes of this act, must be so perfect in point of form that it must be free from every objection that



might be allowed to prevail against it on an appeal at quarter sessions. Such a construction of the statute will place the vote of a claimant in extreme hazard from the ignorance or negligence of the overseers; for the statute has given the claimant himself no power to control any error in the rate, but his power is limited by sect. 30 to a claim to be rated for the relief of the poor, and the same section requires the overseer to do no more than put the name of the occupier upon the rate for the time being. The claimant therefore has no opportunity of rectifying any error in the particulars of the rate, except by an appeal at quarter sessions, for which the time may not be sufficient, and the expenses would be great; we think that if the rate has been duly made in manner and form, having the name of the occupier, with the premises for which he is rated, the rateable value, and the amount of the rate, it is a sufficient rate within the intention of the act. On looking at the rate in question, we think it appears therein with sufficient certainty, that all the persons who are claimants are rated by their respective names, and for premises therein described as a factory, warehouse, steam-engine, steam pipes, gearing and shafting, gas pipes, &c.; and as it appears by the case that the factory comprehends all the rooms that are occupied by each of the claimants respectively, so each claimant being rated for the whole factory, is rated for that part of it which he himself occupies, and as to the annual value of the part of the property, it is expressly stated on the rate, as is also the amount of the rate itself. We think, therefore, that each occupier is rated in respect of the premises occupied by him in the manner required by the act. The fourth question submitted by the revising barrister is, whether each such occupier can be held to have duly paid the

1843.

WRIGHT  
and  
TOWN CLERK OF  
STOCKPORT.

1843.

---

WRIGHT  
and  
TOWN CLERK OF  
STOCKPORT.

rate in respect of his occupation, part of it having been foregone in respect of what was empty, and the whole of that which was paid having been in fact paid by the landlord. From the statement of the case, it appears that the whole of the rate, with the exception of what was allowed for the portions that were empty, was actually paid by the landlord, so that the rate must have been paid for every part of the premises in the actual occupation of any one; and the real question does not arise on the non-payment of the rate, but on the payment of it by the landlord under an agreement with the tenant. This latter question has been argued before us, and the several decisions of the Court of Queen's Bench have been brought in review, where the question had been, whether a settlement has been gained by paying the public taxes or levies of a parish in cases where the tenant has been rated, but the rate has been paid by the landlord. It appears however to us to be unnecessary to consider the analogy those cases may bear to that now under consideration, as there is one circumstance in the present case which essentially distinguishes it from those cited; for here the claimants are rated as joint occupiers, and the rate is paid by the two persons whose names appeared on the rate, and not by one who was a stranger to the rate, as the landlord in the cases referred to always was. We think it impossible to contend that after the payment of a whole rate by any of the parties actually rated, the fact of the payment by each, any, or every of them, can be brought in question, but that such payment by any of the parties rated must enure to the benefit of all as a virtual payment by each. We therefore think that the persons rated have paid the poor rate within the meaning of the statute, and that the decision of the revising barrister was right.

Decision affirmed.

1843.

HUGHES, *Appellant*, and OVERSEERS OF CHATHAM,  
*Respondents*.—BURTON'S CASE.

THIS was an appeal from the decision of the revising barrister for the borough of Chatham, who had placed a voter by the name of Burton on the register, under the circumstances disclosed in the following case.

James Burton, the party objected to, occupied a house in the Dockyard of Chatham, of the annual value of 40*l.*, from July, 1835, to September, 1842, when he removed to a house in Milton Terrace, Chatham, about a mile from the Dockyard, where he now resides. The house in Milton Terrace he hires of the landlord in the usual manner, and pays a rent of 50*l.*, and is rated for it, and pays such rates in the ordinary way, and no question arises in respect of such house: with regard to the house in the Dockyard, it belongs to the Lords Commissioners of the Admiralty. The person objected to is master ropemaker in the Dockyard, and as such he had the house as his residence; he paid no rent in money for it, but had it as part remuneration for his services; he had the exclusive use and occupation of the house for himself and family; and no part of it was used for public services, the office in which he performed his public services being away from it. He had the keys of all the doors, and no person but himself had any control over the house. He was rated to all the poor-rates and assessed taxes in respect of the house in his own name as the occupier: such rates and taxes were paid by the Paymaster-general's clerk at the Pay-office at Chatham—they were so paid as part remuneration for his service. If he had not been allowed the house, he would have had an allowance for a house in addition to

A servant, who occupies a house in part remuneration for his services, and not merely for the better performance of them, is entitled to a vote under sect. 27 of the Reform Act, as *tenant* to his master.

When also rates are paid in part remuneration for service, it is immaterial whether the payment is made by the landlord or tenant for the purpose of conferring a right to vote on the latter.

1843.  


---

 HUGHES  
 and  
 OVERSEERS OF  
 CHATHAM.

his salary ; and now that he has not a house in the Dockyard, he is allowed 1*l.* 1*s.* per week by the Admiralty in lieu of rent and rates, under the name of lodging-money. If he had paid the poor rates himself in respect of the house in the Dockyard, instead of having them paid for him as above, the Admiralty would have repaid him. Upon these facts the objections were disallowed, and the names retained upon the lists ; the revising barrister deciding that the said James Burton occupied within the borough of Chatham, as tenant of a house of the clear yearly value of not less than 10*l.*, and had duly paid all the poor rates and assessed taxes which had become payable from him in respect of such premises, previously to the 6th day of April then next preceding.

*Kinglake*, for the appellant. Upon the facts stated in this case, it is clear that Burton occupied the house for which he claims to vote in the capacity of servant, and for the more convenient discharge of his duties. It is a mistake to suppose that the services must be performed in the house, in order to exclude the relation of landlord and tenant. An occupation for the more convenient performance of the service is sufficient. The decisions upon the law of settlement are applicable to the present question. In *R. v. Minster* (a), Le Blanc, J. says "If the pauper's occupation of the tenement was necessarily connected with the service of his master, I should have no hesitation in saying that that would not have conferred a settlement, although of a greater yearly value than 10*l.*, because the occupation would have been necessary for the performance of the service, and the master might allot what apartments he pleased." In *R. v. Kelstern* (b), Bayley, J. "I take the distinction

(a) 3 M. & S. 276.

(b) 5 M. & S. 138.

to be this, if the occupation be unconnected with the service it will confer a settlement, but if it be necessarily connected with the service it will not confer a settlement." *R. v. Bardwell* (a) and *R. v. Snape* (b), are also in point. In *R. v. Cheshunt* (c), which has a close resemblance to the present case, the pauper was held to occupy as servant, not as tenant. And per Lord Ellenborough, C. J. "It is like the case of a coachman occupying rooms over a stable, and such an occupation is not within the meaning of 13 & 14 Car. 2, c. 12."

The claimant in *Ferrer's case* (d) was a book-keeper, and exclusively occupied an entire house, the property of his employers, which communicated through a door by a private passage outside, but not in front, into the distillery yard, besides having a hall-door to the street. The claimant exclusively kept the keys of both these doors. His employers kept the house in repair and paid the taxes, and it appeared that if the claimant ceased to be book-keeper he would have to give up the possession. Eleven judges held unanimously that he was not entitled to be registered as a householder.

In *Bertie v. Beaumont* (e), where a servant occupied, it was held that his master might in an action on the case declare as upon his own possession. How then is the occupation of Burton, as a servant of Government, distinguishable from the above cases? There is nothing from which the relation of landlord and tenant can be inferred.

The same point has frequently arisen upon indictments for burglary, where the house occupied by the servant has been well laid as that of the master; *Roscoe's*

1843.

---

HUGHES  
and  
OVERSEERS OF  
CHATHAM.

(a) 2 B. &amp; C. 161.

(b) 6 A. &amp; E. 275.

(c) 1 B. &amp; A. 475.

(d) Alc. R. C. 248; Elliot, 169.

(e) 16 East, 33.

1843.  


---

 HUGHES  
 and  
 OVERSEERS OF  
 CHATHAM.

Cr. Cas. (a), *R. v. Stock* (b), *R. v. Williams* (c), *R. v. Burgess* (d), *R. v. Peyton* (e). Nor is *Margett's case* (f) at variance with these decisions, since the possession was exclusive, and the essence of the offence in burglary is the breaking into the dwelling-house of a person in *actual* occupation. The circumstance of having been rated is in no degree conclusive as to the character in which the premises were occupied; in *Reg. v. Ponsoby* (g), the occupants of Hampton Court Palace were held rateable as having a beneficial occupation ultra the question of service, and even an occupation strictly permissive will not relieve the occupants from a rate.

The second question is with regard to the rating and paying rates within the sect. 27 of the Reform Act. Payment by a third person will not suffice.

It is important to consider the origin of settlement by rating. The object was, that the parish officer should have cognizance of the party's inhabitancy in the parish; and whether he was duly or unduly rated, so long as his name appeared on the rate, was unimportant. *R. v. Bridgwater* (h) proceeded upon this ground.

So a rating under the stat. 3 W. & M. c. 11, s. 6, (though not in respect of a tenement), was held to confer a settlement, because the parish officers who made the rate had thereby notice or knowledge of the inhabitancy of the party rated, *R. v. Openshaw* (i), *R. v. Okehampton* (k), *R. v. Axmouth* (l), *R. v. Weobley* (m); in this latter case an excise officer had been rated, but had

(a) P. 319.

(c) Hawk. P. C. 522.

(e) 2 East, P. C. 501.

(g) 11 L. J. M. C. 65.

(i) Burr. S. C. 552.

(l) 8 East, 383.

(b) 2 Taunt. 339.

(d) Kel. 27.

(f) 2 Leach, 930.

(h) 3 T. R. 550.

(k) Burr. S. C. 5.

(m) 2 East, 68.

never himself paid the rates, the payment having been made by the collector without any deduction from the former's wages, and it was held that he gained no settlement. The language of the Reform Act (a) is distinct, and the 6 Vict. c. 18, s. 75, uses the words "such person," being the party liable to be rated, "shall have *bonâ fide* paid," &c. But where premises are let free of rates and taxes, can the occupier be properly said to be the person paying them? and an equivalent to payment will not do. Where, by an arrangement between parties, a fixed sum is substituted for the liability to a fluctuating amount of rate, the tenant ceases to have an interest in the rates and taxes of the borough. In *R. v. South Kilvington* (b), lately decided in the Queen's Bench, where a tenant agreed with his landlord to pay an increase of rent equal to the amount of rates and taxes, the landlord paying the rates and taxes; the tenant being assessed, but the landlord paying the assessments; it was held not to be a payment by the tenant within 3 W. & M. c. 11, s. 6, or the 4 & 5 Will. 4, c. 76, s. 66; and if by such a payment a party cannot obtain a settlement, it cannot be contended that he could gain a franchise.

1843.

---

HUGHES  
and  
OVERSEERS OF  
CHATHAM.

*Cockburn*, for the respondents, admitted that the occupation must be as tenant, and contended that the

(a) 2 Will. 4, c. 45, s. 27, "No person shall be so registered unless such person, where such premises are situate in any parish or township in which there shall be a rate for the relief of the poor, shall have been rated in respect of such premises to all rates for the relief of the poor in such parish or township, made during the time of such his occupation so required as aforesaid; nor unless such person shall have paid on or before the 20th day of July in such year all the poor's rates and assessed taxes which shall have become payable from him in respect of such premises previously to the 6th of April then next preceding."

(b) 13 L. J. (N. S.) Mag. Ca. p. 3.

1843.  
 HUGHES  
 and  
 OVERSEERS OF  
 CHATHAM.

facts here established such a relation. In the cases cited of master and servant, the latter was immediately under the control of the former, and they all stood in the humble position of menial or agricultural servants. Here the occupation was not for the *purposes* of service, but for the *payment* of service; and Lord Ellenborough, in *R. v. Kelstern*, expressly states that the occupation there was for the mutual convenience of master and servant: that case bears no analogy to the present where an officer has a house to reside in provided by Government. *R. v. Cheshunt* was also the case of a common labourer.

This house was allowed to Burton as a part remuneration for his services, and not for the greater convenience of discharging them; indeed the case shows that they continued after the occupation had ceased.

In *R. v. Bardwell*, the Court found the fact that the occupation was solely for the better performance of the service; but in *R. v. Melkridge (a)*, where the occupation was as reward for the performance of certain duties, (which is the case here), the pauper gained a settlement.

Suppose a servant to be offered a house *or* so much money for his service, and to prefer the former, he would then give a consideration for his occupation, which is the true principle to be regarded, and establishes a tenancy; *R. v. Langrville (b)*, per Lord Tenterden. *R. v. Lower Hayford (c)*, also is expressly in point. The question of liability to be rated is important. *R. v. Ponsonby* does not bear out the argument on the other side, for in that case the Court seem to have looked upon the occupants as tenants at will, and a tenancy, however trifling, will suffice. [*Maule, J.* There the

(a) 1 T. R. 598.

(b) 10 B. & C. 902.

(c) 1 B. & Ad. 75.



1843.

---

 HUGHES  
and  
OVERSEERS OF  
CHATHAM.

question was one of occupation only.] Then as to the payment of rates, a very large proportion of rate-payers pay through their landlords, and unless that mode is recognized, an extensive disfranchisement must follow. There is, however, no ground for any objection, since first or last the money comes from the tenant's pocket as occupier of the house, by way of remuneration. He was rated and liable to pay; then it is as though he instructed another person to make the payment for him, which is a good payment, according to *R. v. Cozens (a)*. Had the tenant paid the rates in the first instance it would have been reimbursed to him; and Lord Ellenborough, in delivering his judgment in *R. v. Axmouth (b)*, said, "as to his being reimbursed afterwards, all the cases agree that makes no difference." *R. v. Fulham (c)*, *R. v. Okehampton* and *R. v. Openshaw* support the proposition that a payment by the tenant mediately or immediately will confer a settlement. *R. v. Weobley* is distinguishable: there no arrangement existed between the parties with respect to the payment, and the case was decided on the ground that the tenant was not affected by the payment at all; it was not deducted out of his salary, nor was his income diminished by it, in fact there was no constructive payment; and *R. v. Kilvington* was in the opinion of the Court a case precisely similar. Would the overseer be at liberty to say to the tenant,—I have received a rate, but as it did not come *directly* from your pocket, you must pay? The inference sought to be drawn by the other side would go to the length of showing that an occupier is debarred from paying by his agent. Sect. 27 of the Reform Act is not altered by sect. 75 of 6 Vict. c. 18; the section in the latter pro-

(a) Doug. 426.

(b) 8 East, 387,

(c) Burr. S. C. 488.

1843.

---

 HUGHES  
and  
OVERSEERS OF  
CHATHAM.

viding assessment and payment as a condition precedent is framed *ipsissimis verbis*, and comes in aid to cure any technical inaccuracies where the rate has been *bonâ fide* paid. He cited Russell on Crimes (a) to show that the doctrine laid down in the cases cited was not applicable, as the relation of master and servant, which existed in them, was not apparent in the present case, and contended that *R. v. Margett* was in favour of his position, and relied on *R. v. Jervis* (b).

*Kinglake* in reply. The distinction as to the grade of service is not sound or definite; the case finds that Burton was a rope-maker, employed in the Dockyard, and occupied the house as such, this holding therefore was ancillary to the service. In *R. v. Ponsonby* the question of tenancy in fact never arose; and it was cited to show the liability of the occupants to be rated in respect of beneficial occupation. *R. v. Hurdie* (c) and *R. v. Terret* (d) establish the same proposition in the case of government servants, so that Burton may be rateable for the occupation in question without determining the character in which he occupied.

*Cur. adv. vult.*

TINDAL, C. J., delivered the judgment of the Court.— In this case two questions were raised before the revising barrister, and argued on an appeal to this Court. First, whether the occupation by James Burton was an occupation as tenant within the 27th section of the Reform Act. Secondly, whether upon the facts stated he has paid poor rates as required by the provisions of the Act. As to the first question the facts are, that the house occupied by the claimant is situated in the Dockyard at

(a) 2d vol. 25. (b) R. & Moo. C. C. 7. (c) 3 T. R. 497. (d) *Ibid.*

Chatham ; that the claimant is a master ropemaker, and as such has the house for his residence ; that he paid no rent in money for it, but had it in part remuneration for his services ; that no part of it was used for public purposes, the office in which he performed his public services being away from it ; that if he had not been allowed the house, he would have had an allowance for a house in addition to his salary. The revising barrister has found that the claimant occupied the house as tenant, and not in the character of servant ; and the question was whether this decision was wrong. Several cases were cited to raise an argument whether such a house could be rightly laid as the dwelling-house of the master in an indictment for burglary. But we think that question so different to the one in dispute, namely, whether this is a tenancy or not, that it is unnecessary to notice those decisions. The class of cases chiefly relied on were those settlement cases in which the question has arisen, whether a servant coming to settle in a tenement belonging to a master is within the meaning of the statute 13 & 14 Car. 2, c. 12. The language and object of that act are very different from those of the statute now under consideration, and therefore there is no similarity of facts in a case arising under the one act, so as to make it a case in point on the question raised on the other. But as the Court in deciding those cases have considered that the settlement turned upon the question, whether a pauper occupied as tenant of his master, those decisions become very material in the present inquiry. In those cases as in this, there was no doubt of the right to exact, and the liability to render service, but the present doubt was whether the relation of landlord and tenant subsisted between the same parties. There is no inconsistency in the relation of

1843.

---

HUGHES  
and  
OVERSEERS OF  
CHATHAM.

1843.

HUGHES  
and  
OVERSEERS OF  
CHATHAM.

master and servant with that of landlord and tenant; a master may pay his servant by conferring on him an interest in real property, either in fee, for years, at will, or by any other estate or interest; and if he do so, the servant becomes entitled to all the legal incidents of the estate as much as if he purchased it for any other consideration. But it may be that a servant may occupy a tenement of his master not by way of payment for services, but for the purpose of performing them. It may be that he is not permitted to occupy as tenant for a reward in performance of the master's contract to pay him, but required to occupy it in performance of his contract to serve his master. The settlement cases cited as founded on this distinction we think applicable to the present question; and as there is nothing to show that the claimant was required to occupy for the performance of his services, or did occupy in order to their performance, or that the occupation was conducive to any other purpose than that for which any one may have been paid for in any other way than by his services; and as the case finds that he had the house in part remuneration for those services, we cannot say that the conclusion at which the revising barrister arrived is wrong. The case indeed states that the claimant was a master ropemaker, and as such had a house as a residence; but that expression is equally applicable whether he was a tenant of the house in payment of his services as master ropemaker, or occupied it for the purpose of performing them. The fact of his having a lower salary in consequence of being allowed a house, though not immaterial, is by no means decisive, for such a fact might exist in a case in which the house was occupied for the purpose of service, and not in the character of tenant. It must be giving the servant a lower salary

in consequence of lodging him in the house, instead of requiring him to find lodgings out of it, without being made a tenant. It may well happen that something in the service shall render it less onerous, or more agreeable, which may cause a reduction of the salary, without being a part of the salary itself. On the second question it appears that the claimant was rated to the poor rates and assessed taxes, and that they were paid for him in part remuneration for his services. It appears to us that the payment being one to which the claimant was liable, it having been paid on his account by those to whom he promised to make it up by giving value for it, it is sufficient within sect. 27 of the Reform Act; whether it might or might not have been so within 3 Will. & M. c. 11, s. 6, by which rating and payment are made to confer a settlement by way of substitution or equivalent to a notice to the parish. The present question arises under an act of parliament conferring the franchise in respect of actual occupation and payment of rates; we think the payment in manner indicative of these qualifications is effectually within the spirit of the act. We therefore think that the decision of the revising barrister is right under these circumstances.

1843.

---

HUGHES  
and  
OVERSEERS OF  
CHATHAM.

Decision affirmed.

---

HUGHES, *Appellant*, and OVERSEERS OF CHATHAM,  
*Respondents*.—SMITH'S CASE.

THE facts in this case resembled those in the preceding, except that the rate had been paid by the claimant's own hand.

1843.

HUGHES  
and  
OVERSEERS OF  
CHATHAM.

TINDAL, C. J.—This circumstance is not unfavorable to the vote, but we think it makes no material difference, and the decision of the revising barrister must be affirmed on the grounds stated in the last case.

Decision affirmed.

*BARTLETT, Appellant, and GIBBS, Respondent.*

Where a vote is claimed for a city or borough in respect of an occupation of different premises in immediate succession pursuant to the 28th section of 2 Will. 4, c. 45, a description of all the premises occupied during the twelve months must be inserted in the list of voters, and the omission of any of them is not such a defect as the revising barrister can amend under 6 Vict. c. 18, s. 40.

THIS was an appeal from the decision of the revising barrister for the borough of Lewes, in Sussex, who stated the following case for the opinion of the Court.

The appellant was inserted in the list of persons entitled to vote in the election of members for the borough of Lewes, in respect of property occupied within the parish of All Saints, as follows :—

Christian Name and Surname.	Place of Abode.	Nature of Qualification.	Name of the Street where situate, &c.
Bartlett Alfred Pleysted	East Street.	House.	East Street.

It was proved at the revision that the appellant had occupied as tenant a house, No. 10, East Street, in the parish of All Saints, within the said borough, since the 25th December, 1842; that he had for considerably more than six months previously occupied also as tenant a house, No. 16, West Street, in the parish of St. John, within the said borough; that he had removed from the latter to the former house immediately, without any interval of time; that each house was of more than the value of 10*l.* per annum; that he had been rated in respect of both houses to all the rates made during

the period of his occupation of them, and that all the rates and assessed taxes due from him in respect of them had been duly paid by him within the time limited by 6 Vict. c. 18, s. 75. An objection was taken that, his qualification consisting not of one house, viz. that No. 10, East Street, but of two houses, No. 16, West Street, and No. 10, East Street, occupied by him in immediate succession, the description of his qualification in the list should correspond with this fact, and that he ought to have been registered for both the houses which constituted his qualification. The revising barrister decided that when a person founds his qualification upon different premises occupied by him in immediate succession, conformably to the provisions of the 28th sect. of 2 Will. 4, c. 45, it is required that he should be registered in respect of all of these several premises, and that they should be specifically set forth in the description of his qualification, the appellant having been registered only for one of the houses occupied by him, and that house having been occupied by him only for a period of six months, he had not proved that he was entitled to have his name retained in the list of voters in respect of the qualification described in the list. An additional objection was taken, that this was an insufficient or an inaccurate description of the appellant's qualification, which the revising barrister had power to correct under the provisions of the 40th sect. of 6 Vict. c. 18. He decided that when a party was objected to, he had no such power, but was bound by one of the provisions of the same section to require him to prove that he was entitled to have his name inserted in the list of voters in respect of the qualification described in such list, and the appellant having failed to do so, his name was accordingly expunged from the list of persons entitled to vote for the

1843.

---

BARTLETT  
and  
GIBBS.

1843.

---

BARTLETT  
and  
GIBBS.

borough of Lewes. The question for the opinion of the Court is, whether under the circumstances mentioned in the above statement of facts the name of the appellant was rightly expunged from the said list of voters. If the Court should be of that opinion, the said list is to stand without amendment; if the Court should be of a contrary opinion, then the said list is to be amended by inserting therein the name of the appellant.

*Creasy* for the appellant. The case raises two questions: 1st. Whether, in cases of successive occupation of two houses, both need be described in the list of voters? 2nd. Had the revising barrister power to amend the list by supplying an omission in that respect? The revising barrister was wrong in thinking that parties similarly situated to this appellant are bound to encumber the register with a description of all the houses they may occupy in succession during the twelve months previous to the last day of July in the particular year. The foundation of the qualification is the occupation of a house of the annual value of 10*l.* and the various restrictions specified in sect. 27 need not appear upon the register. The question depends on sects. 27 and 28 of the Reform Act and the 13th sect. of 6 Vict. c. 18 (the Registration Act.) The qualification on the register should be an occupation of a house of 10*l.* yearly value within the borough. The 27th section indeed provides three conditions, which must be complied with before the claimant's name has a right to be inserted, viz. an occupation for twelve months of the same premises, payment of all rates and taxes which shall have become payable by him in respect of the same, and a residence for six months next previous to the last day of July within the borough, &c. But an



occupation for twelve months is no more part of the qualification itself than the payment of rates, and it has never been contended that this latter compliance with the proviso need be stated on the register. Then sect. 28 provides "that the premises in respect of the occupation of which any person shall be entitled to be registered in any year shall not be required to be the same premises, but may be different premises occupied in immediate succession by such person during the twelve months next previous to the last day of July in such year." By this section, the occupation in succession of the two houses of the same value is made an equivalent to the occupation of one house, and as the latter need not have been on the register, neither need the former. The present list corresponds exactly with the forms given in the schedules to the Reform and Registration Acts, and a successive occupation is not noticed in either of them. The legislature would not have omitted doing so for the information of overseers, if a distinction were required to be made. Schedule I. No. 1, of the Reform Act, describes "street" in the singular number only. [*Tindal*, C. J. The reason for inserting both houses is the same, viz. to give an opportunity for inquiry, and perhaps applies stronger to the first house, where the voter is not to be found at the time.] The argument of inconvenience will hardly be held to bear wherever the legislature is silent. The overseers of parishes being the persons to fill up the lists, and the Act not giving a form for cases of successive occupation, they cannot be expected to enter into nice distinctions, and go in fact beyond what the Act has specified as necessary. To require them to do so would be productive of infinite confusion and difficulty. Nor can overseers of one parish be expected to know where a person has occupied in another, and

1843.

---

 BARTLETT  
and  
GIBBS.

1843.

BARTLETT  
and  
GIBBS.

this is a case of an occupation in two different parishes, the overseer of St. John's has nothing to do with the overseer of All Saints, each is required to insert that only which passes in his own parish. 2dly. The revising barrister had the power to amend by the 40th section of the Registration Act (a). The learned barrister how-

(a) "The revising barrister shall correct any mistake which shall be proved to him to have been made in any list, and shall expunge the name of every person whose qualification as stated in any list shall be insufficient in law to entitle such person to vote; and also the name of every person who shall be proved to him to be dead; and wherever the christian name, or the place of abode, or the nature of the qualification, or the local or other description of the property of any person who shall be included in any such list, and the name of the occupying tenant thereof, shall be wholly omitted in any case where the same is by this act directed to be specified therein, or if any person whose name is included in any such list, or his place of abode, or the nature or description of his qualification, shall, in the judgment of the revising barrister, be insufficiently described for the purpose of being identified, such barrister shall expunge the name of every such person from such list, unless the matter or matters so omitted or insufficiently described be supplied to the satisfaction of such barrister before he shall have completed the revision of such list, in which case he shall then and there insert the name in such list; provided always, that whether any person shall be objected to or not, no evidence shall be given of any other qualification than that which is described in the list of voters or claim as the case may be, nor shall the barrister be at liberty to change the description of such qualification as it appears in the list, except for the purpose of more clearly and accurately defining the same, and where the name of any person inserted in any list of voters shall have been objected to by the overseers or by any other person, and such other person objecting to shall appear by himself or by some one on his behalf in support of such objection, and shall prove that he gave the notice or notices respectively required by this act to be given by him, every such barrister shall then require it to be proved that the person so objected to was entitled on the last day of July then next preceding to have his name inserted in the list of voters in respect of the qualification described in such list, and in case the same cannot be proved to the satisfaction of such barrister, or in case it shall be proved that such person was incapacitated by any law or statute from voting in the election of members to serve in parliament, such barrister shall expunge the name of every such person from the said lists; provided always, that where any person whose name appears on any list of voters for any county shall be objected to on the grounds of having changed his place of abode without having sent in a fresh notice of claim, it shall be lawful for the barrister revising such list to

ever decided that he had no such power where *objections* were raised, but only where the errors were detected by himself. This construction would render the section nearly, if not quite, inoperative, whereas it was clearly intended to prevent persons being deprived of their franchise by overseers' errors, and here there was no fault in the claimant. The description of qualification is merely incomplete, the correction may be made without substituting another qualification. If the Court should hold otherwise, there will be no end to the objections of a like nature for the future.

1843.

BARTLETT  
and  
GIBBS.

*Hildyard*, for the respondents, contended that the revising barrister was right upon both points. The whole argument on the other side has been founded on the 27th section of the Reform Act, whereas the right arises on the 28th. It has been asked too, if it be not necessary to insert in the list a twelve months' occupation of one house, why it should be required to state a successive occupation of two or more houses; and the schedule of forms given by the Act has been used to show that such statement is not necessary. But the answer to that argument is simply, that to state an occupation of one house for twelve months would give no information to any one, because every one knows it to be necessary. The same may be said of the rating, but the fact of the successive occupation should be shown for one purpose, among others, of assisting inquiries.

No sound argument can be deduced from the forms

retain the name of the person on the list of voters, provided that such person, or some one on his behalf, shall prove that he possessed on the last day of July the same qualification in respect of which his name has been inserted in such list, and shall also supply his true place of abode, which the said barrister shall insert in such list."

1843.

---

BARTLETT  
and  
GIBBS.

given in the schedule of the act, since the qualifications there specified bear a very small proportion to the actual number that must exist. House and land is one instance of a qualification not there mentioned. The same observation disposes of the argument with reference to the singular number of "street" being used in the heading of the lists given in the Schedule of Forms; a qualification for "house and land" is not noticed there. The object of the Reform Act was to diminish the expense of elections, by doing away with a scrutiny at the time of election, and transferring it to another tribunal, and a period exceeding a month was given in which objectors might sift the overseers' lists; but these precautions are in vain, if a person may be put on a list for an imperfect qualification, or one on which he does not intend ultimately to rely. The practice, if upheld, will lead to great inconvenience in large towns. Then by the 40th section of the late act, 6 Vict. c. 18, the revising barrister "shall require it to be proved that the person objected to was entitled on the last day of July then next preceding to have his name inserted in the list of voters, *in respect of the qualification described in such list.*" This section differs widely from the corresponding one (sect. 50) in the Reform Act; under that, omissions might be supplied in every column, but the 40th section of the recent act (6 Vict. c. 18), makes a distinction as to the powers of the barrister in cases where there is an objection, and where there is none: and he may not change the qualification, though to supply such an omission as the number of a house is clearly within his jurisdiction. The claimant can have no difficulty now where he wishes to substitute a different qualification from that in respect of which his name

appears on the list. Sect. 15 (a) enables him to do this by a notice to the overseers before the 25th day of August in any year.

1843.

---

 BARTLETT  
and  
GIBBS.

*Creasy* in reply. The intention never could have been that all the premises occupied by the claimant during the twelve months should be described. For if they were so, he could not answer in the affirmative the third question, which was allowed by the Reform Act to be put to a voter at the time of tendering his vote (*b*).

*Cur. adv. vult.*

TINDAL, C. J.—In this case the name of the appellant had been inserted in the list of voters entitled to vote in the election of members for the borough of Lewes, in respect of property occupied within the parish of All Saints, and the appellant's qualification was described as a house in East Street. An objection having been made to the appellant's name and claim, he was required by the revising barrister to prove that he was entitled to have his name inserted in such list in respect of the qualification therein described. The case states—it was proved that the appellant had occupied a house, No. 10, East Street, in the parish of All Saints, within the borough, since the 25th December, 1842; and that he had removed into that house immediately, and without any interval of time, from another house situate in West Street, in the parish of St. John's, within

(a) Vide sect. 47 of 2 Will. 4, c. 45, which only allowed a name wholly omitted to be supplied.

(b) 2 Will. 4, c. 45, s. 58—"Have you the same qualification for which your name was originally inserted in the register of voters now in force for the city," &c.

1843.

---

BARTLETT  
and  
GIBBS.

the said borough; that he had occupied as tenant for considerably more than six months previous to his removal, and that each of these houses was of the clear yearly value of more than 10*l*. It was objected upon this evidence that the appellant's qualification consisted of the occupation by him of the two houses in immediate succession, and not merely of the house in East Street described in the list, and therefore that the name should be expunged from the list. It was answered by the appellant, that his qualification was correctly described, and that even if it were not, the description might be amended by the revising barrister under the provisions of 6 Vict. c. 18, s. 40. The revising barrister decided that it had not been proved that the appellant was entitled to have his name inserted in the list of voters, in respect of the qualification described in the list, and expunged from the list the name of the appellant. The question submitted for the opinion of the Court is, whether under the circumstances stated in the case the name of the appellant was rightly expunged, and we think that it was.

By the statute 6 Vict. c. 18, s. 40, it is enacted "that whether any person shall be objected to or not, no evidence shall be given of any other qualification than that which is described in the list of voters or claim:" and that where the name of any person inserted in any list of voters shall have been objected to by the overseers, or by any other person, notice of objection shall be given to the revising barrister, who shall require it to be proved that the person so objected to was entitled on the last day of July then next preceding to have his name inserted in the list of voters, *in respect of the qualification described in such list*. The question therefore is, whether the appellant was entitled to have his name inserted in

the list of voters in respect of his occupation of the house in East Street, without any evidence of any other qualification; or in other words, whether his qualification consisted of the occupation of the house in East Street, or of the occupation in immediate succession of the two houses described in the case. By the statute 2 Will. 4, c. 45, it is enacted, "that every male person of full age, and not subject to any legal incapacity, who shall occupy, within such city or borough, or within any place sharing in the election for such city or borough, as owner or tenant, any house, warehouse, counting-house, shop, or other building, being either separately or jointly with any land within such city, borough, or place occupied therewith by him as owner, or occupied therewith as tenant under the same landlord, of the clear yearly value of not less than 10*l.*, shall, if duly registered according to the provisions hereinafter contained, be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough." Now if the claim had stopped here, the occupation by the appellant of the house in East Street would have entitled him to vote, but the section proceeds, "Provided always, that no such person shall be so registered in any year unless he shall have occupied such premises as aforesaid for twelve calendar months next previous to the last day of July in such year." Under this section therefore the appellant is not entitled to have his name inserted in the list of voters in respect of the occupation of the house in East Street, for he had not occupied it for twelve months. By the 28th section it is enacted, "That the premises in respect of the occupation of which any person shall be entitled to be registered in any year, and to vote in the election for any city or borough as aforesaid, shall not be re-

1843.

---

BARTLETT  
and  
GIBBS.

1843.

---

**BARTLETT  
and  
GREEN.**

quired to be the same premises, but may be different premises, occupied in immediate succession by such person during the twelve calendar months next previous to the last day of July in such year." Under this section the appellant was clearly entitled to have his name inserted in the list of voters. The first question is, whether he was entitled to have his name inserted in respect of his occupation of the house in East Street alone, or whether the occupation of the house in West Street formed part of his qualification, and ought to have been inserted in the list. On the part of the appellant it was insisted, that the right to vote for a borough was given to the occupier of premises of the description and yearly value mentioned in an early part of the 27th section, without reference to the duration of his occupation, provided his name and occupation were duly registered. It was also urged, that the forms prescribed in the schedule are not adapted to the description of any other premises than those in the occupation of the voter at the time of the description, especially an occupation of premises in some other parish. But we think that the decision of this question ought not to depend upon a critical examination of the forms of the schedule, that are inserted merely as examples, and to be followed implicitly as guides, only so far as the circumstances of each case may admit. And looking at the whole scope and object of the different enactments relevant to this question, we consider that the appellant's title to have his name inserted in the list of voters rested upon his being in the occupation of the two houses in immediate succession, and that he ought to have been registered for both houses, the occupation of which in succession constituted the qualification to vote ; for we think that the legislature



intended that the registration list should afford such information of the nature and situation of the premises, in respect of the occupation for which such persons claimed to vote, as would enable other voters to ascertain, by inquiring the sufficiency of the occupation and value of such premises. And it is obvious, that, for such a purpose, in cases of successive occupation, a description of the premises formerly occupied by the claimant would be at least as necessary as the description of the premises still in his occupation, and without such information it might be difficult to prevent surprise and fraud on the one hand, or to avoid groundless opposition on the other. And we think that the language of the 40th section of 6 Vict. c. 18, and of the 28th section of the 2 Will. 4, c. 45, is sufficiently explicit to carry this intention into effect. We are therefore of opinion, that the description of all the premises occupied in succession during the twelve calendar months should be inserted in the list of voters, as forming the voter's qualification, as the whole object of the notice would be defeated if the omission of any part of such qualification could be supplied by the barrister in a Court of revision. We are also of opinion, that the omission in the list of the premises in John Street as a qualification inserted in the list, made a change in the description from the qualification, not warranted by the provisions of the 40th section ; and that the revising barrister was right in refusing to make such alteration, and in expunging the name of the appellant from the list.

1843.

---

BARTLETT  
and  
GIBBS.

Appeal disallowed.



1843.

*Thursday,*  
*November 16.*

The duties of a postmaster in receiving, comparing and stamping duplicate notices of objections pursuant to the 100th sect. of 6 Vict. c. 18, may be performed by his clerk or servant acting at the office.

*ALLEN, Appellant, and WATERHOUSE, Respondent.*

**THIS** was an appeal against the decision of the revising barrister for the borough of Bradford. Certain objections, in themselves immaterial to the present question, had been made to the appellant's vote, and the following point was submitted for the opinion of the Court. On behalf of the objection all the requisitions of 6 Vict. c. 18, s. 17 (*a*), were proved to have been complied with, as to the delivery of the proper notice of objection to the overseers, and all the directions of sect. 100 (*b*) of the same act had also been strictly adhered to, except

(*a*) Every person whose name shall have been inserted in any list of voters for any city or borough, may object to any other person as not having been entitled on the last day of July next preceding to have his name inserted in any list of voters for the said city or borough. And every person so objecting shall, on or before the 25th day of August in that year, give or cause to be given a notice according to the form numbered (10) in the said schedule (B), or to the like effect, to the overseers who shall have made out the list in which the name of the person objected to shall have been inserted, or if the person objected to shall have been inserted in the list of freemen of any city or borough, except the city of London, then to the town clerk of such city or borough; and every person so objecting shall also give or cause to be left at the place of abode of the person objected to, as stated in the said list, a notice according to the form numbered (11) in the said schedule, and every notice of objection shall be signed by the person objecting.

(*b*) "It shall be sufficient in every case of notice to any person objected to in any list of county, city or borough voters, and in the livery list of the city of London, and also in the case of county voters to the occupying tenant, whose name and place of abode appears on such respective list as aforesaid, if the notice so required to be given as aforesaid shall be sent by the post free of postage, or the sum chargeable as postage for the same being first paid, directed to the person to whom the same shall be sent, at his place of abode as described in the said list of voters, and whenever any person shall be desirous of sending any such notice of objection by the post, he shall deliver the same, duly directed, open and in duplicate, to the postmaster of any post office where money orders are received or paid, within such hours as shall have been previously given notice of at such post office, and under such regulations with respect to the registration of such letters and the fee to be paid for such registration (which fee shall in no case exceed two-

that the notice directed to the party whose vote was objected to was delivered open and in duplicate to the *postmaster's managing clerk* instead of the postmaster himself, who was proved to have been absent from Bradford at the time such notice was delivered, and that the duties of comparing the notice with the duplicate, and stamping and returning the latter to the party bringing the same, were performed by the managing clerk, and not by the postmaster himself. On the production of the stamped duplicate by the party who posted such notice, the barrister decided that this was evidence of the notice having been given to the person at the place mentioned in such duplicate, on the day on which such notice would in the ordinary course of post have been delivered to such place. The agent for the party objected to, contended that the notice should have been delivered to and examined by the postmaster himself. And the party objected to having declined to attempt further to substantiate his right to be retained on the list of voters, the barrister expunged his name from such list.

1843.

---

 ALLEN  
and  
WATERHOUSE.

*Bompas*, Serjt. for the appellant. The notice was not given in compliance with sect. 100(a) of 6 Vict. c. 18.

pence over and above the ordinary rate of postage) as shall from time to time be made by the Postmaster General in that behalf, and in all cases in which such fee shall have been duly paid, the postmaster shall compare the said notice and the duplicate, and on being satisfied that they are alike in their address and in their contents, shall forward one of them to its address by the post, and shall return the other to the party bringing the same, duly stamped with the stamp of the said post office, and the production by the party who posted such notice of such stamped duplicate shall be evidence of the notice having been given to the person at the place mentioned in such duplicate on the day on which such notice would in the ordinary course of post have been delivered to such place. Provided, &c."

(a) Ante.

1848.

---

 ALLEN  
and  
WATERHOUSE.

The language there employed clearly shows that it was the intention of the legislature to cast the duty of comparing the notice and duplicate upon the postmaster himself, and not upon a clerk or his deputy. Various modes of giving objections are provided, but that through the post office is purely for the convenience of the objecting party, and he should strictly comply with the terms of the act. Unless an objection be given in the proper way, a voter whose name appears on the list is entitled to remain there. The duty to be discharged in this instance is an act rather of a judicial than a ministerial nature, a comparison of documents is to be made, and until that is done and a duplicate stamped, the objection cannot be forwarded. This power also is limited to those post offices where money orders are paid, by which it is intended that persons of responsibility alone should be employed. Certain hours are fixed for the duty. [*Maule, J.*—Do you imply that the Postmaster General must attend during stated hours at the London office for the purpose?] If it can be shown that the post office in London does not come within the words of the act, it was a *casus omissus*.

From the interpretation clause (a) it may be collected that the deputy or clerk of the postmaster is not competent to act in this case, since it authorizes other clerks and deputies there specified to discharge certain duties for their principals, but is silent on this particular. Postmasters also are disqualified from voting; their servants may, and this is an additional reason for construing the act strictly. [*Maule, J.*—The word post-mistress is not used.] That is merely a grammatical error, and in such a case the comparison must be made and the duplicate stamped by the post-mistress.

*J. L. Adolphus*, for the respondent, argued that as the stamped duplicate had been once received by the revising barrister, the question whether it was duly stamped or not could not be entertained. If the Court were of opinion that the question was still open, he would maintain that there was no necessity that the duplicate should be stamped by the hand of the postmaster.

1843.

---

 ALLEN  
and  
WATERHOUSE.

In the superior Courts, when a document is produced with a stamp sufficient to satisfy the revenue laws, no further inquiry is permitted; *R. v. Preston* (a). So if a document be produced under sect. 76 of the Insolvent Debtors' Act, with a seal purporting to be the seal of the Insolvent Debtors' Court, it is unnecessary to prove that the seal is actually the seal of the Court; *Doe d. Duncan v. Edwards* (b). The word "such" means "duly stamped," being an epithet to the word "duplicate." The argument on the other side would render this act, which professes to facilitate the means of giving the required notice, an obstacle to parties objecting to a vote, for in ordinary cases at *Nisi Prius* the act of posting would be *prima facie* evidence that the letter reached the person to whom it is addressed.

As to the interpretation clause, it has in no case substituted servants for principals, and the legislature must be taken to have been cognizant of the post office duties and practices, for according to stat. 1 Vict. c. 33, "the duties may be performed by the postmaster or his deputies." This is no judicial act according to the definition given by Mansfield, C. J., in *Midhurst v. Waite*. Nothing is required of a postmaster but a superintendency in the office, and a person so situated may make

(a) 5 B. &amp; Ad. 1028.

(b) 9 A. &amp; E. 554.

1843.  


---

 ALLEN  
 and  
 WATERHOUSE.

a deputy (a). The construction contended for on the other side would lead to various absurdities, as in London where no postmaster attends for the purpose of those duties. The postmaster might as well be called upon to prove his own identity to each person bringing an objection : and when any particular construction leads to absurd results, the Court will not adopt it. [*Erskine*, J. Why were certain hours fixed ?] For the convenience of all parties, so as not to interfere with the ordinary duties. Here the clerk of the postmaster was a deputy *de facto*, and his act is the act of the principal. In *Leake v. Howell* (b), and in *Parke v. Kell* (c), an officer acting as steward is sufficient.

*Bompas*, Serjt., replied.

*Cur. adv. vult.*

TINDAL, C. J., delivered the judgment of the Court.—The question in this case is, whether the delivery of a notice, directed William Allen, the person whose vote was objected to, was a sufficient delivery within the meaning of the 100th section of the 6 Vict. c. 18. The objection taken before the revising barrister was, that a notice of objection both open and in duplicate was delivered to the postmaster's managing clerk, instead of to the postmaster himself, who was proved to be absent from Bradford at the time the notice was delivered ; and that the duties of comparing the notice with the duplicate, and stamping and returning the duplicate to the party bringing the same, were performed by the postmaster's managing clerk, and not by the postmaster

(a) Com. Dig. B. 1 (Offices) ; 3 Bulstrode, 77 ; 3 Burr. 1259 ; 6 Bac. Ab. Officers, L.

(b) Cro. Eliz. 533.

(c) 1 Salk. 95.

1843.

---

ALLEN  
and  
WATERHOUSE.

himself. And whether this was a sufficient compliance with the 100th section of the statute was the question. The revising barrister held it was ; and upon consideration, we think his decision was right. I must confess that my mind at first strongly inclined to the opinion, that the proper construction of the statute required the several acts specified in the 100th section to be performed personally by the postmaster, founding my opinion principally on the ground that the postmaster was named in the section, without any mention of deputy or assistant ; and that the interpretation clause, section 101, which in some instances authorized acts directed to be performed by the principal to be performed by some other officer, is silent as to the office of *postmaster*. On further consideration, we agree with the revising barrister, thinking that the intention of the legislature was to authorize the act to be done by the clerk or servant of the postmaster at the office acting there with his assistance, and under his direction and controul ; that the term " postmaster," where it first occurs in the section, cannot be strictly confined to the postmaster personally, seems necessarily to follow from the extreme inconveniences that might result if such construction should be admitted. According to the terms of the act, the notice and duplicate are to be delivered to the postmaster : a delivery, therefore, even to a clerk or servant, although all the specified duties are performed by the postmaster himself, would on that construction be no compliance with the statute ; the very hand of the postmaster himself would have to be that into which the notice is delivered ; but the postmaster himself may have been unknown to the party who brings the document, what evidence has he to furnish himself with at the time of the delivery as to the

1843. identity of the postmaster, if that point should afterwards be contested? In what state of uncertainty must the party who sends the notice be, if he felt that at the time he meant to avail himself of it, he is liable to be defeated by evidence, that it was not the postmaster himself, but a clerk, who took it from his hands. The same difficulty would equally apply to the performance of other duties to be imposed on the postmaster. It would be dangerous and inconvenient, if, after obliging parties to comply with the requisites of the statute so far as he was able, evidence might be given that the postmaster was unable by illness to attend personally at the time, or was absent from some other unknown cause, and the duties were performed, as in this instance, by a managing clerk; but further, we think that the statute could not have meant that in every case a comparison of the two documents must be made by the postmaster himself, for it is obvious that in populous places, like London for example, where a great number of such notices might come at one time, and immediate transmission might be necessary, a compliance with the statute would be absolutely impracticable, if the eye and mind and assent of the postmaster himself was essential to give validity to the notice, and the assistance of a servant or clerk was inadmissible. The duty required by the act may as well be performed by an assistant or a managing clerk as by the postmaster himself, and it cannot be said, with any ground of reason, that comparing the two documents together, and pronouncing them to agree, is a judicial act; then the receiving the documents, stamping, and returning one of them to the person bringing them, it is needless to say, are ministerial acts, and those of the very lightest order. We must therefore think, that if the legislature had for any reason
- ALLEN  
and  
WATERHOUSE.



intended to confine the performance of the duty of the postmaster personally, there would be words to that effect; and that all that was required by the legislature was, that the party should deliver the notice open and in duplicate to the proper post office for examination, within hours properly notified under the act, he paying the proper fee for this registration, and waiting for and receiving back the duplicate, stamped with the post office stamp, which, with the production of the stamp itself, is made sufficient evidence of the service of the notice. As there appears to be a substantial compliance in the present case, we hold that the objection to the notice fails; that the decision of the revising barrister is right, and must be affirmed.

1843.

---

ALLEN.  
and  
WATERHOUSE.

Decision affirmed.

DOBSON, Knt., *Appellant*, and JONES, *Respondent*.

THIS was an appeal from the decision of the revising barrister for the borough of Greenwich, who had disallowed the claim of the appellant on the grounds which appear in the following case :—

The appellant, who is the surgeon to Greenwich Hospital, has occupied a house at the infirmary in the hospital for the last nineteen years and upwards. It is the house appropriated for the surgeon of the hospital, and he occupies it as such. He took possession of the house upon being appointed surgeon, and has occupied it ever since. The house is of the clear yearly value of 10*l.* and upwards; the furniture in the house belongs to him; he did not pay for any fixtures on going into the

Monday,  
November 20.

Where a house was occupied by an officer of government, not merely in part-remuneration for his services, but with a view to the more efficient performance of the duties of his office, and subject to certain prescribed regulations :

*Held*, that the occupation was not in such legal relation oftenant to a landlord as would confer a borough vote, the Reform Act.

1843.

---

DOBSON  
and  
JONES.

house, and if any repairs are required, he applies to the commissioners of the hospital, by whom whatever is necessary is done. The name of the appellant is upon the rate-books as rated for the house, and the rates and window tax in respect of it have been paid; but it appeared in evidence that no poor-rates have ever been demanded from the appellant, nor has he ever paid or tendered the amount of any rate or tax for the said house: but that the rates have always been paid by the commissioners of the hospital. It was also stated by the appellant that he had never had any communications with the Lords Commissioners of the Admiralty, by whom he was appointed surgeon to the hospital, upon the subject of the payment of the rates. The appellant stated that he had a written appointment, but it was not produced, nor was there any evidence to show by what tenure he holds the office of surgeon. A printed paper, purporting to be an extract from an Order in Council, dated January, 1806, and containing certain orders, rules, and regulations, was produced by the appellant (who stated that he had received it at the Admiralty Office), containing the following order.

“Surgeons of hospitals, when not provided with a residence within the hospital, to be allowed fifteen shillings a-week lodging money.”

A book was also produced, copies of which had been furnished by the government to the different officers of the hospital, containing certain regulations, established by the Lords Commissioners of the Admiralty, for the government of Greenwich Hospital, dated June 24th, 1829, and one of those regulations is as follows.

“All officers and others having separate apartments, are to inhabit those assigned to them, and no exchanges or other appropriations of apartments or alterations

therein are to be made without *our express permission* ; they are to use their best endeavours to preserve them uninjured, and in a neat and proper state of cleanliness and repair ; and they will be required to make good any loss or injury arising from negligence or inattention on their parts."

1843.

---

DOBSON  
and  
JONES.

The regulations above referred to were made by the Lords Commissioners of the Admiralty, under and by virtue of an Act of Parliament, 10 Geo. 4, c. 25, intituled "An Act to provide for the better Management of the Affairs of Greenwich Hospital." By sect. 3 it is enacted "That all the affairs of the said royal hospital and the commissioners of the said Greenwich Hospital thereby appointed as therein after, and all other the officers and persons appointed to the said hospital and to any situations connected therewith, and to the schools of the said hospital, shall be under the authority, controul, and direction of the Lord High Admiral or Commissioners for executing the office of Lord High Admiral for the time being, and the appointment of all officers of the said hospital, civil and military (except the governor, lieutenant-governor, and commissioners of the said hospital, who shall be appointed by his Majesty, his heirs and successors), and the appointment of the chaplains thereof, and of the rectors, vicars and perpetual curates of the livings and chapelries belonging, or which may belong to the said hospital, and the establishing of rules, orders and regulations for the guidance of the commissioners of Greenwich Hospital and their successors in the management of the estates and property of the said hospital, and the admission of officers, pensioners, and nurses into the said hospital, and the salaries to be paid to all such officers and persons, shall be exercised by and vested in the Lord High Ad-

1843.

---

 DOBSON  
and  
JONES.

miral for the time being, who shall have full power to remove from the said hospital, and from any situation connected therewith, any officers or other person as aforesaid (except the governor, lieutenant-governor, and such commissioners, rectors, vicars, and curates), who shall be guilty of any misbehaviour in their said respective situation or offices. The revising barrister was of opinion upon the facts above stated, 1st. That the appellant did not occupy as owner or tenant within the meaning of the statute 2 Will. 4, c. 45, s. 27. 2nd. That not having paid the rates and taxes pursuant to the enactment in the same section, he was not entitled to have his name retained upon the list (a).

*Byles*, Serjt. (with whom was *T. Sanders*), contended that this was an occupation by the appellant, either as *owner* or *tenant*, within the meaning of sec. 27 of the Reform Act; and that the terms there introduced must not be confined to their legal sense merely. If such were the construction, a mortgagee would be deprived of his franchise, a cestui que trust, and a parish clerk also. Here, no doubt, the legal estate is vested in the commissioners of Greenwich Hospital, but the terms on which the appellant holds his appointment give him a life interest in the office. By sect. 3, which gives the general controul over the hospital and over all appointments therein to the Admiralty, the surgeon and other officers can only be removed from office for misbehaviour, which the law will not presume. It is laid down in Bacon's Abridgment (b), that "if an office be granted to a man to have and enjoy so long as he shall behave himself well in it, the grantee hath an estate of freehold

(a) The judgment of the Court upon the first point rendered a decision on this unnecessary. Sed vide ante, p. 35, *Hughes v. Overseers of Chatham*.

(b) Title "Offices," H.

in the office ; for since nothing but his misbehaviour can determine his interest, no man can prefix a term shorter than his life. So, if the office be granted to a man *quamdiu se bene gesserit tantum*, his estate will not be less for the word *tantum* ; his misbehaviour in each case determines his interest." Here the residence was expressly annexed to the office, for the house was appropriated to the surgeon of the hospital. Had the present question arisen on a county vote, the appellant could have proved a life office, which would have been a sufficient qualification ; for his interest is in no way distinguishable from that of a parish clerk or schoolmaster. He referred to *R. v. Warren* (a), *R. v. Gaskin* (b), and *Rogers on Elections* (c). But if he did not occupy as owner, he was tenant at will. There was an *exclusive* occupation ; the appellant could maintain trespass as between himself and wrong doers, and his landlord could not bring an action of ejectment against him. *R. v. Chederton* (d) establishes this point. *R. v. Fillongley* (e) and *R. v. Lakenheath* (f) are decisive authorities to show that a tenancy of this description would confer a settlement. Indeed, the present case is stronger, because the power of the commissioners is restrained by the Admiralty, who alone can remove him from his office. *R. v.*

1843.

---

 DOBSON  
and  
JONES.

(a) Cowp. 371.

(b) 8 T. R. 299.

(c) Page 126 *et seq.* *Middlesex*, 2 Peck. 92. — Kentish, licensed clerk of Hendon, appointed by the parson generally : licence from the bishop, confirming the appointment "during our pleasure and no longer." It was argued that the office was held at the pleasure of the bishop, and not under an appointment by the parson. It was answered that the licence was not necessary, and that a general appointment is *prima facie* for life. The vote was held good.

(d) 4 B. &amp; C. 230.

(e) 1 T. R. 458.

(f) 1 B. &amp; C. 531.

1843.

---

 DOBSON  
and  
JONES.

*Camfield* (a) is in point ; there the tolls at a gate between Leeds and Wakefield were let to Ward, who employed Ellis to collect them, and Ellis lived for that purpose in a house belonging to the trustees, and built by them for that purpose ; he had a weekly sum from Ward, and the family of Ellis lived with him in that house. A burglary having been committed in the house, it was described in the indictment as the house of Ellis ; and upon a case reserved, all the judges were unanimous that it was rightly described. For Ellis had *exclusive* possession ; it was unconnected with any premises of Ward's, and Ward did not appear to have any interest in it. By the same rule, it is clear that the relation of landlord and tenant, not of master and servant, existed in this case. [*Maule, J.* Suppose the appellant to be incapacitated from disease, would he not be removable ? ] He might retain his office and perform his duties by deputy, in the same way that a rector acts by his curate. [*Maule, J.* The ecclesiastical law provides for such cases.]

As to the third part, he was not aware that the facts were distinguishable from those in the Chatham cases, but he would contend that payment by a third party, even a stranger, would, if the creditor consented to receive it, discharge the principal. A plea of payment would be good in such a case. The facts here led to an inference of some agreement with respect to the payment of rates having existed. [*Tindal, C. J.* We must be guided solely by the facts apparent on the case.] Unless a residence be found, the appellant would be entitled to 15s. per week ; he foregoes this sum, and is provided with the house in question ; surely this is a contract. Suppose a person agrees to pay a stranger

(a) R. & M. C. C. 42.

20*l.* to insure him from all rates and taxes, is not this a payment? and is it less a payment because the landlord is the party paying? In Viner's Abridgment, title "Ratihabitio," it is laid down, that if a stranger, in the name of the mortgagor (without his consent or privity), tenders the mortgage money, and the mortgagee accepts it, this is a good satisfaction, and the mortgagor or his heir agreeing thereto may re-enter upon the land. The reason why payment by a tenant is necessary under 3 & 4 W. & M. does not apply, as notoriety and publicity were essential as a substitute for the written notice. No publicity is requisite here. *R. v. Bridgnorth (a)* was decided on the ground that the payment of rates was made by a volunteer, and without the knowledge or sanction of the party rated. From this case it is apparent that the hospital had always paid the rates, and such could not have been done for nineteen years without the appellant's knowledge. *R. v. Lower Heyford (b)* shows that a constructive payment is good for the purposes of settlement, and the use of the term *bonâ fide* in section 75 must be taken to include cases like the present.

1843.

---

 DOBSON  
and  
JONES.

*Kinglake* for respondents. There is a fallacy in claiming for the appellant a right to vote as owner in virtue of an office and the annexation of the house to that office, inasmuch as the situation which he holds is not an office in the legal sense of the word. The law defines "an office" to be a situation, by virtue of which a person can claim certain emoluments and profits; here there was no more than a collateral fee paid in the shape of a fixed salary, as remuneration for cer-

(a) 10 A. &amp; E. 66.

(b) 1 B. &amp; Ad. 75.

1843.

---

 DOBSON  
and  
JONES.

tain services, and the appellant is to all intents and purposes a mere servant; his appointment was similar to the rest of the navy surgeons, and the construction contended for on the other side would include every surgeon in the navy and every nurse in the hospital under the term officer. The house was not in fact annexed to the office, as the commissioners might make any appropriation they pleased; they were not bound to provide him with any house. They were at liberty to pay 15s. per week instead. Parish clerks and schoolmasters only vote where they hold lands and tenements annexed of the annual value of 40s., they are in reality freeholders, and their case bears no resemblance to the present. In *R. v. Chederton* no duties were performed, no service was required of the pauper. Numerous authorities show that this payment of rates is not sufficient, and no payment is good without reference to some agreement between parties. *R. v. Bridgnorth* is decided on the broad principle that a *previous authority* must be proved. And *R. v. Melsonby (a)* decides that a constructive payment is not equivalent to actual payment. *R. v. Rutter (b)* shows, that under 1 Will. 4, c. 18, a constructive payment will not suffice for purposes of settlement. The words of that statute are, "no person shall acquire a settlement by reason of the yearly hiring of a dwelling-house, &c. unless the rent for the same *shall have been paid* by the person hiring the same;" the language employed in section 27 of the Reform Act is not more precise, and must bear the same construction.

The only payment by the appellant was in the shape of service; and no demand was ever made upon him as tenant.

(a) 12 A. &amp; E. 687.

(b) 5 B. &amp; Ad. 215.



*Byles*, Serjt., in reply. *R. v. Melsonby* is not applicable; there was nothing done in that case which could be construed into a payment by the tenant, and Lord *Denman* in delivering his judgment stated that he could not distinguish it from *R. v. Pakefield (a)*, where he had said that, "when the pauper had parted with all the personal property, and ceased to have any control over it, a payment out of that over which he had no control was not a payment by him." A parish clerk or schoolmaster cannot be said to have a strictly legal estate; the word "owner," as applied to these and others in similar situations, is used in its popular sense, and they are instances to show that such interest is sufficient to confer a right to vote. As to the circumstance of no demand for rates having been made upon the appellant, *Cullen v. Morris (b)* is in point.

1843.

---

 DOBSON  
and  
JONES.

*Cur. adv. vult.*

(a) 4 A. & E. 612.

(b) 2 Starkie, 577, which was an action on the case against the defendant, as high bailiff of the city of Westminster, for refusing the vote of the plaintiff at the election of a member to serve in parliament, and Lord *Mansfield*, in his charge to the jury, made the following observations: "In order to sustain this action it is necessary for the plaintiff to show, in the first place, that he had a right to vote at the election. In order to prove this, he has produced an extract from the resolutions of a Committee of the House of Commons, from which it appeared, that the right of voting is in the inhabitant householders, paying scot and lot of several parishes, one of which is the parish of Saint George, Hanover Square, within which Knightsbridge, the place of the plaintiff's residence, is situated. It is also proved, that the plaintiff had been an inhabitant of the parish for many years, and that he had never refused to pay the poor rates when he was personally called upon. That a rate was made in March, 1818, of which no part had been paid when the election took place. The high bailiff had been informed that the rate had been demanded, but had not been paid when the matter came before him, which was upon the plaintiff's second application to vote, the plaintiff having in the first instance tendered his vote to the poll clerk, who told him there was an objection to his vote, but that he might

1843.

---

 DOBSON  
and  
JONES.

TINDAL, C. J.—In delivering our opinion in a former case, in which Hughes was appellant, and the overseers of Chatham were respondents (a), we laid down at some length the principles on which we thought the class of cases to which the present appeal belongs ought to be decided; and we drew the distinction between those cases where officers or servants in the employment of the government are permitted to occupy a house belonging to government, as part remuneration for their services to be performed, and those in which the place of residence is selected by the government, and the officers or servants are allowed to occupy them with a view to a more efficient discharge of the duties and services imposed upon them; and upon that occasion we declared our opinion, that the officers and servants who fall within the first description might properly be considered to occupy as tenants, although the residence was allotted to them as such officers and servants; while at the same time we stated, that the relation of landlord and tenant would not be created by the appro-

go round, if he chose, to the high bailiff, and have the point argued. The plaintiff upon this rejection went and paid all rates that were due, and again tendered his vote to the poll clerk. His vote was again refused by the poll clerk, and the plaintiff then went to the high bailiff, and the question was argued. On the part of the defendant it is contended, that according to the true construction of the act of 26 Geo. 3, c. 108, the plaintiff had no right to vote. Every question as to the right of voting is for the peculiar consideration and determination of the House of Commons, and no decision in any court of law is at all binding upon that House. Upon the present occasion, however, it is necessary that I should state my opinion in point of law as to the right of voting, and that opinion is, that the plaintiff had a right to vote. He had paid the poor's rates for several years; there had been no personal demand of the rates which were due, and no written paper containing a demand of the rates had been left at his house, although an application had been made at the house. It appears to me, therefore, that he had a right to vote, and that he had that right at all events upon his second application and tender of his vote."

(a) *Ante*, p. 35.

priation of a particular house to an officer or servant as his residence, when such an appropriation was made not with a view to remuneration of the occupier, but to the interest of the employer, for the more effectual performance of the service required from such officer or servant. In deciding, therefore, the present appeal, we have only to consider within which of the two classes the present case ranges itself. It is found by the case, that the appellant is the surgeon of Greenwich Hospital ; that the house he occupies is in the infirmary ; that he occupies it as such surgeon. Now the nature of the office of surgeon to the hospital is such, that a residence of some known and certain dwelling may reasonably be required for the due performance of the duties of the office. But it is further found, that he was placed in it when he was first appointed, nineteen years ago, and that he has contrived to occupy it ever since ; and that it is the house appropriated to the surgeon for the time being. And lastly, it is found, by the revising barrister, that by the regulations established by the Lords Commissioners of the Admiralty, that the officers of the hospital, having apartments, are to inhabit those assigned to them ; and that no exchange or other appropriation is to be made without permission. The revising barrister, on this state of evidence before him, appears to have come to the conclusion, that the appellant occupies this house not simply by the permission of the government, and as part remuneration for his services as surgeon, but that he is required to occupy such house with a view to the more efficient performance of the duties of his office ; and consequently, that there was no occupation by him in the legal relation of tenant to a landlord. And upon the state of facts brought before the revising barrister,

1843.

---

DOBSON  
and  
JONES.

1843.

---

DORSON  
and  
JONES.

and set out in the case, we cannot say he has come to a wrong conclusion in point of law, and we hold the decision to be right; but giving effect to the first objection, against the appellant's right to vote, that is, by holding there is no occupation as tenant, it becomes unnecessary to consider the second objection, relating to the mode of paying occupier's rates. We therefore think the decision of the revising barrister should be affirmed.

Decision affirmed.

---

C A S E S

DECIDED IN THE

COURT OF COMMON PLEAS

ON

APPEAL

FROM

THE REVISING BARRISTERS.

1844.

JOHN GADSBY, *Appellant*, and SAMUEL WARBURTON,  
*Respondent*.

1844.

THE respondent's name appeared on the list of persons entitled to vote in the election of a knight of the shire for the southern division of Lancashire in respect of property situate in the township of Harpurhey, within the polling district of Manchester, and the place of his abode was correctly stated in the said list to be Newton, near Hyde, Cheshire.

A notice of objection was signed thus :  
" J. G. of Poplar Grove, Didsbury, on the register of voters for the township of Manchester." Held a sufficient compliance with the form sched. (A.), No. 5, of 6 Vict. c. 18, and sec. 7, without stating the name of the parish in which Didsbury is situate. The same description should be given in the notice of objection as in the list of voters.

CASE.

The appellant had sent to the respondent, through the post, a notice of objection as follows (that is to say) :

"To Mr. Samuel Warburton, of Newton, near Hyde, Cheshire :—Take notice, that I object to your name being retained on the Harpurhey list of voters for the

1844. southern division of the county of Lancashire. Dated  
 this 18th day of August, 1844.  
 GADSBY (Signed) " John Gadsby, of Poplar Grove,  
 and Didsbury, on the register of voters for the  
 WARBURTON. township of Manchester."

The appellant's name appeared on the register of voters for the township of Manchester, and the place of his abode was stated in the said register to be (as stated in the said notice of objection) " Poplar Grove, Didsbury."

It appeared that the place of the appellant's abode was truly described in the notice of objection to the extent that it appeared in that notice, and as he had himself described it in the register of voters.

Objection.

It was urged on behalf of the respondent that the description of the appellant's place of abode as it appeared on the notice of objection was not sufficient to sustain a notice of objection against a voter on the list for the purpose of expunging his name, though it might be sufficient on the register to entitle the appellant to retain his name on the list of voters so far as the description of his place of abode on the register affected that right.

Barrister's  
 opinion.

The revising barrister held the notice insufficient in fact, and that something ought to have been added to the description of the appellant's place of abode, as " Lancashire," or " near Manchester" (Didsbury being a few miles only from Manchester, and a township within the polling district of Manchester), or the like, as the case might be ; and he retained the respondent's name on the list without calling upon him to prove his qualification.

It was contended on behalf of the appellant that as he had described his place of abode in the notice of objection in the same words as he had described it on

the register of voters to entitle him to vote it was sufficient, and that by law he was not bound to describe his place of abode in the notice of objection more fully or otherwise than he had previously described it in the register of voters then in force. He ruled the contrary.

1844.

---

 GADSBY  
and  
WARBURTON.

His decision.

The question for the opinion of the Court is, whether  
 the appellant's statement in the notice of objection of the place of abode, as he has stated it for the purpose of his own vote on the register, is, under the facts hereinbefore mentioned, sufficient in law to sustain the said notice against the respondent, the appellant having described his place of abode in the notice as it is described on the register.

Question.

If the Court should be of opinion that the description given by the appellant in the said notice of objection of his place of abode is sufficient in law to sustain the notice against the respondent, the name of the respondent is to be expunged from the list of voters, otherwise to remain.

*Cockburn* and *Kinglake*, Serjt., for the appellant. The objector's place of abode is sufficiently given at the foot of the notice. It is the same as that contained in the register for the purpose of the objector's own vote. The schedule (A.), No. 5, to the stat. 6 Vict. c. 18, has been followed, and that was intended only in order that the objection might be known and at once pointed out. It would have been a valid objection, perhaps, if the description had varied in the notice from that on the list. At all events, the description is correct, being true in fact and similar to the list also—no further particulars could be requisite.

*Cardwell* for the respondent urged that the notice of

1844.

---

GADSBY  
and  
WARRURTON.

objection was not sufficient. The question of identity is important for many reasons; among others, costs may be given, and the party objected to should have the security of knowing by whom they are to be paid. The revising barrister was not, at all events, obliged to hold this notice sufficient; he has exercised his judgment upon it, and the Court will not say that he is wrong in law. The act should be strictly followed, or there will be no bounds to the abuses that may result.

*Cockburn* replied.

TINDAL, C. J.—The proper mode of testing the validity of this notice of objection is to compare it with the form given in schedule (A.), No. 5, of the 6 Vict. c. 18. There is in the present case a compliance with that form. Harpurhey, being a township, is properly so called, and could not be called a parish; but that is not a variance from the form in the schedule, it being provided by the 7th section that the notice is to be to the “like effect.” Provided, therefore, that the objector’s place of abode is truly given, it is in exact compliance with the form, except the substitution of township for parish; but it is not necessary that a person’s abode should be in a parish. Com. Dig. “Abatement,” F. 25.

It is objected that there may be two Didbury townships, and that for the purpose of identity, the words “near Manchester” should have been added. The case does not find that such was the fact, nor that the omission has produced inconvenience or uncertainty. I think that there is no fault in the notice of objection, and that the barrister’s decision must be reversed.



COLTMAN, J.—If the party had changed his place of abode between the time of registering and the time of giving the notice of objection, that circumstance might give rise to a very different question. It appears to me that there were abundant means of identifying the objector.

1844.

---

GADSBY  
and  
WARBURTON.

MAULE, J.—I think the statement of the place of abode of the objector as stated in the register is sufficient, without any statement of the county. It seems to me that place of abode, means place of abode as stated in the register. In the event of a change of place of abode, whether it be necessary to put in the later place of abode it is not necessary to decide now. I think it is not necessary, but it would be safer to put it in. The statute has the words “like effect;” now the like effect is when it effectuates the objects intended by the notice, *i. e.* the identifying of the objector.

ERLE, J.—As a general rule, I apprehend a description of a person as of a township is sufficient, without adding the name of any county or great town. The same description should be given in the notice of objection as on the list of voters.

Decision reversed.



1844.

*ECKERSLEY, Appellant, and BARKER, Respondent.*

A qualification in respect of an undivided moiety in two houses, which had neither name nor number, was described in the list of voters as "undivided moiety in two freehold houses in Tinker Lane, Hollinwood," held a sufficient compliance with the 6 Vict. c. 18, s. 4, and the form No. 2, Schedule (A.), without stating the names of the occupying tenants (a).

**THIS** was an appeal against the decision of the revising barrister for the southern division of Lancashire. The case was as follows:—

The respondent's name appeared on the list of voters for property situate in the township of Chadderton, in the polling district of Oldham, in the southern division of Lancashire, and was objected to by the appellant.

The particulars of the respondent's christian and surname, place of abode, nature of qualification, and situation and description of the qualifying property appeared on the list of voters as follows:—

**CHADDERTON.**

Christian Name and Surname of each Voter at full length.	Place of Abode.	Nature of Qualification.	Street, Lane, or other like place in the Parish or Township, and number of house (if any), where the property is situate, or name of the property (if known by any), or name of the occupying tenant; or, if the qualification consist of a rent-charge, then the names of the owners of the property out of which such rent-charge is issuing, or some of them, and the situation of the property.
Barker, John.	Seedly Bank, Pendleton.	Undivided moiety of two freehold cottages.	Tinker Lane, Hollinwood.

It appeared in evidence that the respondent was seised in fee-simple of an undivided moiety of two cottages situate in Tinker Lane, Hollinwood, in the township of Chadderton; that a part of the township of Chadderton

(a) This form requires "the street, lane, or other like place, and number of the house (if any), where the property is situate, or the name of the property (if known by any), or name of the occupying tenant, to be inserted."

is commonly called and well known by the name of Hollinwood; that part of the public turnpike road from Oldham to Manchester passes along Tinker Lane, all one side of which lane, and at one end thereof, the whole of the said lane is within Hollinwood, in the township of Chadderton; and that the other part of the said lane is within the township of Oldham. The division between the two townships is well and commonly known. There are from forty to fifty cottages standing along Tinker Lane, and occupying, with the intervals between them, a line of two hundred or two hundred and fifty yards in length. About ten of the cottages are in the township of Oldham. All the other cottages are in the township of Chadderton. *None of the cottages in Tinker Lane are numbered; nor are the two cottages, in respect of which the respondent founded his qualification, as before mentioned; nor is either of them known by any name of the property.* Any person inquiring in Tinker Lane or the neighbourhood for the respondent's cottages, would readily find the cottages described in the said list of voters.

1844.

---

 ECKERSLEY  
and  
BARKER.

It was objected, on behalf of the appellant, that the description given, namely, "Tinker Lane, Hollinwood," as the same appeared in the said list of voters, was not a sufficient description of the situation of the qualifying property, as required by the statute 6 Vict. c. 18, reference being also had to the forms in Schedule (A.), appended to the said statute; and that neither of the cottages being numbered, nor the property known by any name, the names of the occupying tenants ought to have been given.

Objection.

The revising barrister thought that "the name of the property, if known by any," and "the name of the occupying tenant," were neither of them intended as substitutes for the number of a house situate in any "street,

 The barrister's  
opinion.

1844.

---

**ECKERSLEY  
and  
BARKER.**

lane, or other like place" (by "other like place" understanding square, court, crescent, yard, alley, and the like); but that they were separate and distinct heads of description of themselves, intended to apply to properties (very numerous in county qualifications) which are not situate in any "street, lane, or other like place," and not to properties which are so situate; and that if all the above descriptions were to be referred to properties situate in some, "street, lane, or other like place," then the numerous properties giving county qualifications to vote, and which are not so situate, as county mansions, farms, manufacturing and other works, and the like, would be left undescribed.

His decision.

The revising barrister decided that the description given of the respondent's qualification as aforesaid was sufficient; and that, under the above-mentioned circumstances, it was not necessary to insert the names of the occupying tenants, or either of them, but offered to do so if the respondent wished it. The respondent declined having the occupying tenants' names or either of them inserted, on the ground that, in consequence of the frequent changing of tenants in small tenements of this kind, the insertion of the occupying tenants' names would probably render the description of his qualifying property less certain than if their names were omitted. The revising barrister retained the respondent's name on the register, without adding any tenant's name. Each of the cottages had an occupying tenant.

Question.

The question for the opinion of the Court was, whether, under the circumstances mentioned and set forth in the above statement of facts, the name of the respondent was rightly retained on the said list of voters, without inserting the occupying tenants' names, or one of them. If the Court should be of that opinion, the said list was

to stand without amendment: but if the Court should be of a contrary opinion, then the said list was to be amended by expunging the respondent's name.

1844.

---

ECKERSLEY  
and  
BARKER.

The case was argued by *Cockburn* for the appellant, and by *Cardwell* for the respondent. The course of the argument sufficiently appears from the judgment.

*Cur. adv. vult.*

TINDAL, C. J., delivered the opinion of the Court.—The objection in this case was, that the description in the list of voters of the property in respect of which the respondent claimed the right to vote was insufficient, inasmuch as it omitted to state the name of the occupying tenant. The qualification is described to be in respect of “an undivided moiety of two freehold cottages in Tinker Lane, Hollinwood;” and it is stated as a fact in the case that none of the cottages in Tinker Lane are numbered, nor is either of the two cottages known by any particular name. The question therefore is, whether, under the circumstances of this case, the name of the occupying tenant is required to be inserted; and we think, upon the proper construction of the act, it is not.

The 4th section of the statute 6 Vict. c. 18, requires the notice of claim to be delivered or sent to the overseers, according to the form of notice set forth in Schedule (A.), and numbered 2, or to the like effect; and the form No. 2 requires the street, lane, or other like place, and number of the house (if any), where the property is situate; *or* name of the property, if known by any; *or* name of the occupying tenant to be inserted. And we think the word “or” in this form is disjunctive, and creates three different descriptions; and that it is

1844.  

---

ECKERSLEY  
and  
BARKER.

sufficient if the qualification is brought within any one of them, namely, either the street or lane, and number, if any; the name of the property, if any; or the name of the occupying tenant, if any. And although it is contended that the 5th section of the act requires the overseers to make out, according to the form numbered 3, in Schedule (A.), an alphabetical list of the claimants, containing (amongst other things) "the nature of his qualification, and the local or other description of his property, *and* the name of the occupying tenant thereof," and that consequently the name of the occupying tenant must be inserted in each case; yet it appears a sufficient answer that this direction is qualified and restricted by the words which immediately follow, viz. "*that the same shall be written as they are stated in the claim.*"

The direction at the head of the form No. 2 appears to us to intend that, if the house is in a street or lane, or other like place in the parish, the street or lane should be mentioned, and, if the houses are numbered, the number also should be given; but that, if the house or premises be not in a street or lane, or other like place, but in a road, or on a common, or the like, then the name of the property should be given, if known by any, or the name of the occupying tenant. If, however, the two latter requisities are held to apply necessarily to the house or premises when situated in a street or lane, then this inconvenience would follow, that there is no description required by the act to be given of a house or premises not situate in a street or lane, or other like place.

The direction given by the legislature to the overseers in the statute 2 & 3 Will. 4, c. 45, s. 37, for the framing of their notice according to the form No. 1, in the Schedule (A.) annexed to that act, which is a notice precisely for the same object and purpose as that required by sec-

tion 4 of the 6 Vict. c. 18, is so plainly expressed as to leave no possible doubt but that the requisition to give the name of the property, or the name of the occupying tenant, only holds where the house is not situate in a street or lane, or other like place. And, as the statute 6 Vict. c. 18, is made in *pari materiâ* with the former act, it may be properly inferred that no more is required by the latter act than by the former.

We therefore think the decision of the revising barrister, that the description of the qualification of the respondent in the overseers' list was sufficient, a proper decision, and that the same must be affirmed.

Decision affirmed.

1844.

ECKERSLEY  
and  
BARKER.

*MARSHALL, Appellant, and BOWN, Respondent.*

THIS was an appeal from several decisions of the revising barristers for the city of Lichfield.

William Marshall objected to the names of John Bown, Robert Leighton, John Mellor, Ralph Pennington, James Radford, and William Stokes, being retained on the second list of voters for the parish of St. Michael, in the said city. The revising barrister retained the names, subject to the opinion of the Court on the following case:

CASE.

The parliamentary borough of the city of Lichfield is a county of itself, and, prior to the passing of the statute

By the stat. 7 & 8 Will. 3, c. 25, "all conveyances, in order to multiply voices, or to split and divide the interest in any houses or lands among several persons to enable them to vote at elections of members to serve in parliament, are declared to be void." Held, that a conveyance is not void within this act, unless the vendor is party or privy to the illegal object.

dor is party or privy to the illegal object.

1844.

MARSHALL  
and  
BOWN.

2 & 3 Will. 4, c. 45, freeholders had the right to vote in the election of members for the said city. In the second list of voters duly made out by the overseers of the parish of St. Michael in the said city, the following six names appeared :

Christian name and Surname of each.	Place of Abode.	Nature of Qualification.	Street, lane, or other place in this parish where the property is situate
Bown, John.	Wade Street.	Freehold house.	St. John Street.
Leighton, Robert.	Footherley.	Freehold house.	St. John Street.
Mellor, John.	Little Aston.	Freehold house.	St. John Street.
Pennington, Ralph.	Shenstone.	Freehold house.	St. John Street.
Radford, James.	Stowe Hill.	Freehold house.	St. John Street.
Stokes, William.	Freeford.	Freehold house.	St. John Street.

Objections were duly made to each of the above names being retained in the said list of voters for the said parish in respect of the above qualification ; and, upon the parties appearing to support their title to have their names retained in the said list, it was proved that the said John Bown and the other five persons were inserted in the said list in respect of the same freehold house in St. John Street in the said city, and that they became and were the joint owners of it under the following circumstances :—Prior to Lady-Day, 1843, one William Gorton contracted in his own name with the then proprietors of the house for the purchase of it at the price of 292*l.* 5*s.*, and having, after such contract, *bonâ fide* sold the said house to the said John Bown and the five other persons above named in equal shares, he caused a conveyance of it from the vendors to the said John Bown and the five other persons above named to be prepared by their solicitor, which was afterwards duly executed by the vendors, whereby the said house was, in con-



sideration of the said sum of 292*l.* 5*s.*, absolutely conveyed to the said John Bown and the five other persons above named, to hold to them in undivided sixth parts as tenants in common in fee simple. The purchase-money was paid to the vendors by the hands of the said William Gorton, but was the proper monies of the said John Bown and the five other persons above named, and contributed by them in equal shares. The house was let to a respectable tenant at 15*l.* a year, and was worth at least that rent. The object of the said William Gorton, in proposing the said purchase to the said John Bown and the five other persons above named, was to increase the number of the voters for the city of Lichfield ; but the purchase on the part of the said John Bown and each of the above named persons was a *bonâ fide* investment of their money, which they would not have made unless they had been satisfied with the value of the premises and the income they were to receive from the investment. They also all expected that the possession of the property would entitle each of them to a vote for the city of Lichfield ; but there was no stipulation or understanding before or at the time of the conveyance to them that they or any of them should vote in respect of the said house in any particular way or in support of any particular interest.

The said John Bown and each of the other above-named five persons had been in the receipt of 50*s.* in respect of his share of the rents and profits of the said house for his own use for twelve calendar months next previous to the last day of July, 1844 ; the said sum of 50*s.* having been paid to each of them by the said William Gorton out of the said rent, which the said William Gorton was authorized to receive on their behalf ; and

1844.

---

MARSHALL  
and  
BOWN.

1844.

---

MARSHALL  
and  
BOWN.

Objection.

each of them had resided for six calendar months next previous to the last day of July within the said city of Lichfield, or within seven statute miles thereof.

It was objected that the conveyance of the said house to the said John Bown and the other five persons above named, under the above circumstances, was void and of none effect by the provisions of the statute 7 & 8 Will. 3, c. 25, s. 7, as being made to them in order to multiply voices and to split and divide the interest in such house, and that under the said act no more than one single voice ought to be admitted for the said house.

The barrister's  
opinion.

The barrister was of opinion that there had been a *bond fide* purchase of the said house by the said John Bown and the five other persons above named for a valuable consideration; and that the 7th section of the said statute did not apply to a conveyance made under such circumstances, and that the provision "that no more than one voice shall be admitted for one and the same house or tenement," related only to boroughs in which, at the time of the passing of the said act, the right of voting was in householders or inhabitants paying scot and (bearing) lot; and he was of opinion, on the whole case, that the said John Bown and the five other persons above named were entitled to have their names retained in the list of voters for the city of Lichfield in respect of their respective shares in the said freehold house.

Similar objections being also made by the said William Marshall to retaining in the same list the names of five other persons whose qualifications were similarly situated. The appeals were consolidated.

Question.

The question for the opinion of the Court was, whether the conveyance to the said John Bown and the other five persons of the said freehold house first above men-

tioned, and the conveyance to the other five persons of the said freehold house secondly above mentioned, respectively, was void and of none effect under the statute 7 & 8 Will. 3, c. 25, s. 7, and whether under the said act the said John Bown and the five other persons, or any of them, were entitled to have their names retained on the said list of voters, and to be admitted to vote in respect of the first of such houses, and the said William Field and the four other persons, or any of them, in respect of the last of such houses respectively.

1844.

---

MARSHALL  
and  
BOWN.

The case was argued by *Byles*, Serjt., for the appellant, and *Kinglake*, Serjt., for the respondent, cited *Elphinston's case* (a). The course of the argument fully appears from the judgment.

*Cur. adv. vult.*

TINDAL, C.J., now delivered the opinion of the Court. The objection taken against the claim of Bown and of the several other persons mentioned in the case, to the right of voting as freeholders in the election of members for the city of Lichfield, was this, that the six persons therein justly named claimed the right of voting in respect of one and the same freehold house, and that the conveyance to those persons was void under the provisions of the act 7 & 8 Will. 3, c. 25. That statute enacts that "all conveyances, in order to multiply voices or to split and divide the interest in any houses or lands among several persons, to enable them to vote at elections of members to serve in parliament, are thereby declared to be void and of none effect."

The argument before us proceeded upon the supposition that the facts of the present case brought it within the scope and operation of that statute; and we are

(a) 3 Luder's Election Cases, 370 (n.).

1844.

---

MARSHALL  
and  
BOWN.

called upon to give the legal construction of that statute with reference to the abstract question whether a *bonâ fide* conveyance, where the money was really paid by the purchaser, and there was no secret trust or reservation in favour of the seller, but where the object of the conveyance was to multiply voices and to split and divide the interest, fell within the provisions of the statute. Whenever that question comes before us we shall be prepared to give our opinion upon it ; but as we think the facts stated in this case do not raise the question, it would be premature to do so on the present occasion. For we think the obvious meaning of the statute is, that, in order to make the conveyance void, *the seller* must be party or privy to the illegal object intended by the conveyance ; for it would indeed seem to be an unreasonable consequence, and one which could never have been in the contemplation of the legislature, that a person who sold property *bonâ fide* to several persons as purchasers, having no intention himself to evade the statute, and no knowledge of any such object or design on the part of the purchasers, should afterwards, and at any distance of time, find the conveyance void, the land thrown back upon his hands, and himself liable to refund the purchase-money, on account of its having been subsequently discovered that the purchase was made by the several persons to whom it was conveyed, in order to split and divide the interest and to multiply votes. And the necessity of this privity and intention on the part of the seller appears further from the subsequent statute, 10 Anne, c. 23, which, after reciting the statute of Will. 3, and that the subsequent statute was made for the more effectual preventing such undue practices, proceeds to make provisions for cases in which the object of the conveyance cannot but be known to the party who conveys

the estate ; and is still further evident from the statute 53 Geo.3, c. 49, which enacts that a devise made for the same purpose shall be taken to be a conveyance within the meaning of the former statutes.

1844.

---

 MARSHALL  
and  
BOWN.

Now, looking at the case before us, there is not only no statement of the fact, but no reason to infer the fact, that the former proprietors of the house, who were the conveying parties, had any knowledge whatever of the object for which the house was purchased at the time they executed the conveyance to the six claimants. Gorton contracted in his own name with the proprietors for the purchase of the house, such proprietors, so far as appears, not having any knowledge whatever of any of the six persons to whom the conveyance was afterwards made, before the actual execution of the conveyance. Then, Gorton, as it is stated, after entering into the contract, *bonâ fide* sold the house to Bown and the five other claimants ; and all that was done by the proprietors was, that, upon the request of Gorton, they executed the conveyance to such new purchasers.

And as to the argument urged on the part of the appellant, that Gorton may be considered as the vendor, and the conveyance taken to be his conveyance, within the meaning of the statute, it appears a sufficient answer, that, upon the facts stated in the case, there is no proof that he had anything to convey, or even that he was a party to the conveyance which is contended to be void under the statute.

As the case, therefore, seems to us not to be brought within the statute, we are of opinion that the objection taken before the revising barrister never properly arose ; and therefore, without giving any opinion upon the merits of that objection, it is sufficient to say the names of the six claimants in respect of the first purchase, and

1844.

MARSHALL  
and  
BOWN.

of the five claimants in respect of the second purchase, (which was made under circumstances precisely similar with the first), were rightly retained on the list.

We therefore give our judgment for the respondent.

Decision affirmed.

GADSBY, *Appellant*, and BARROW, *Respondent*.

To gain a county vote under the 20th sect. of 2W. 4, c. 45, (a) as occupying tenant of lands or tenements, the tenant must be liable to a single rent of £50 per annum to the same landlord.

THIS was an appeal against the decision of one of the revising barristers for the southern division of Lancashire. The following case was stated for the opinion of the Court.

#### CASE.

The respondent's name appeared on the list of persons claiming to be entitled to vote in any election for the said division of Lancashire in respect of property situate in the township of Failsworth, being a township within the polling district of Manchester.

The qualification in respect of which the respondent claimed to be entitled to vote was described in the column of the said lists, headed "nature of qualification," in the following words and figures, viz. "occupation of land and buildings at a rental of £50 and upwards." It appeared in evidence that the respondent occupied land and buildings for which he paid £55 a-year, under two different landlords, to one of whom he paid a rental of £35 per annum, and to the other a rental of £20 per annum; that he occupied the said land and buildings as tenant, and was and is *bonâ fide*

(a) This decision also necessarily applies to cases under 6 Vict. c. 18, s. 73.

liable to the several yearly rents aforesaid, amounting together to the said sum of £55 a-year, but that he did not occupy as tenant, under one and the same landlord, any lands or tenements for which he was or is *bond fide* liable to pay to the same landlord a yearly rent of not less than £50.

1844.

---

GADSBY  
and  
BARROW.

It was contended on behalf of the appellant, that the occupation of the respondent not amounting to a yearly rental of £50 under any one landlord, he could not unite the two occupations and rentals so as to qualify himself to vote as occupying tenant of lands or tenements for which he was *bond fide* liable to a yearly rent of not less than £50. Objection.

The revising barrister was of opinion that the respondent was an occupier of lands or tenements for which he was and is *bond fide* liable to a yearly rent of not less than £50, within the meaning of statutes 2 Will. IV. c. 46 and 6 Vict. c. 18, and retained his name on the list of voters accordingly. Barrister's opinion.

The question for the opinion of the Court was, whether, under the circumstances mentioned, the name of the respondent was rightly retained on the list of voters. If the Court should be of that opinion, the list is to stand without amendment, but if the Court should be of a contrary opinion, then the said list is to be amended, by expunging the name of the respondent therefrom. Question.

*Cockburn* for the appellant. The statute 2 Will. IV. c. 46, s. 20, is express in its language, and the question arises thereon. To acquire the franchise, there must be, by sec. 20, an occupation of lands at a yearly rent of £50, and that must mean under one landlord. The respondent does not do so. The intention of the legisla-

1844.

---

 GADSBY  
and  
BARROW.

ture, so far as that intention may be guessed at, is to be collected from a reference to sec. 27 of the same statute, where the words "*under the same landlord*" are used, hence the inference is strong that the legislature considered it an important feature that the holding should be under one landlord, as well in boroughs as in counties. *Sweetman's* case (*a*) is an Irish decision in favour of this view.

*Cardwell* contra. It was clearly intended that the franchise should be enjoyed by any person who shall occupy as tenant any lands for which he pays rent to the amount of £50; this is the fair interpretation of the language used. And as the argument is strengthened by the fact that the words "*under the same landlord*" is omitted in the 20th sect. and introduced in the 27th, thus showing that a distinction was in the contemplation of the legislature, who would otherwise have used similar language to express a similar intent (*b*). The decisions under the 6 Geo. IV. c. 57, are analogous, and support the respondent's construction of this statute (*c*). It cannot matter *to* whom the rent is paid, the important question is *by* whom it is paid. The voter is a substantial person, and has the same interest in the county whether his holding is under one or many landlords.

(*a*) 1 Al. Reg. Cases, 27.

(*b*) Sect. 20 confers on leaseholders the right to vote in counties, and uses the words, "who shall occupy as tenant any lands, &c. for which he shall be *bond fide* liable to a yearly rent of not less than £50, shall be entitled to vote, &c." By sect. 27, "who shall occupy within such city or borough, or within any place sharing in the election for such city or borough, as owner or tenant any house, warehouse, counting-house, shop or other building, being either separately or jointly with any land within such city, borough or place occupied therewith by him as owner, or occupied therewith by him as tenant *under the same landlord*, (&c.) shall, (&c.) be entitled to vote."

(*c*) *R. v. Tunbridge*, 5 L. J., M. C. 13; *R. v. Tadcaster*, 4 B. & Ad. 703.



*Cockburn* was heard in reply.

1844.

GADSBY  
and  
BARROW.

TINDAL, C. J.—The question depends upon our construction of the 20th sect. of the stat. 2 Will. IV. c. 45. A new right of voting was given by that section under three different sets of circumstances; until that time it being the well-known law that no one having less than a freehold interest was qualified to have a voice in the election of a knight for a shire. This section gives a right to vote to every male person of full age, and not subject to any legal incapacity, “who shall occupy as tenant any lands or tenements for which he shall be *bonâ fide* liable to a yearly rent of not less than £50.” And the grammatical construction of this language appears to imply that the rent of £50 shall be a single rent; if not, how easy to have said “rent or rents to the amount of £50.” The two other instances in which the same section has conferred the right to vote further this construction. First, “A lessee or assignee to any lands or tenements of any term originally created for not less than sixty years of the clearly yearly value of not less than £10,” has the right to vote. In such case the voter must be the lessee or assignee of one term of £10 in yearly value, and the being owner of two terms, though of greater amount in the aggregate than £10, would not entitle him to a vote. The same may be said of the remaining instance, viz. of the residue of a term of twenty years of the yearly value of £50, the vote is given in respect of the single term of the value of £50. There appears no reason why the legislature should have had in its contemplation, in the last clause of the same section, any other case than that of the single landlord, which was clearly contemplated in both the former clauses. Nor can any reason be given why

1844,

---

 GADSBY  
and  
BARRETT.

holding by parol should have the benefit of adding his rents together more than a lessee or assignee of a term. It seems to me, upon this sec. 20 alone, that to gain a vote as an occupying tenant, the person must be liable to a single yearly rent to the amount of £50; and the 27th section is in favour of that view. The latter section makes no mention of *a rent*, but gives a right to vote to an occupier as owner or tenant of any house, &c., or any house, &c. with land, occupied by him as owner, or as tenant *under the same landlord*, of the clear yearly *value* of not less than £10. It might be necessary to ascertain the aggregate value of the several premises occupied, and but for the restriction, "under the same landlord," a tenant could have added together the values of premises held of different landlords. The necessity for the words in the 27th section, which were not required in the 20th, was to carry out the intention which was common to both sections.

It may be observed too, that the 6 Vict. c. 18, s. 73, which extends the right of these £50 occupiers to the cases of joint occupations and occupations of different lands in succession, makes no alteration in the prior act as to the liability to a single yearly rent, which it probably would have done, if such had been the intent of the legislature. The section, on the contrary, speaks throughout of "*a yearly rent*." The decision of the revising barrister must therefore be reversed.

COLTMAN, J.—The 20th section appears to me clearly to require a liability to a single rent to the amount of £50. It might be the policy of the legislature not to subject a tenant to the conflicting demands of two or more landlords to whom he owes allegiance.

MAULE, J.—This person cannot be said to be occupying lands for which he was liable to pay a rent of not less than £50. He was occupying lands and liable in respect of them to a rent of £35, and he was liable in respect of other lands to a rent of £20, but he held no lands for which he was liable to pay £50. Neither the payment of a certain rent, nor the value of certain lands, was the basis of the right conferred by sec. 20, but a liability to pay a certain rent. The right arises from a liability to a certain contract; but no such contract existed here; and there is nothing to show that the legislature meant anything but what they have already expressed in the words “a rent.”

1844.

---

GADSBY  
and  
BARROW.

ERLE, J.—It seems to me that one tenancy at a rent of not less than £50 was the qualification intended to be given by this 20th section; such is certainly the natural meaning of the words used, and that construction is fortified by the terms of the 27th section, where the words, “under the same landlord,” (no mention being made of rent) show an intention to confine the right to cases of *one* tenancy of the stated value. To my mind, the analogy between the Poor Law statutes and those relating to qualification to vote for members of parliament, does not seem very great.

Decision reversed.



1844.

COOPER, *Appellant*, and HARRIS, *Respondent*.

A. had, within 12 months before the last day of the preceding July, held office under the postmaster-general, and was thus, by stat 22 G. 3, c. 41, s. 1, rendered incompetent to vote on that day. Held, that the revising barrister, on proof thereof at the next revision of the list, was bound to expunge his name under 6 Vict. c. 18, s. 40.

Objection.

Barrister's decision.

**THIS** was an appeal from the decision of the revising barrister appointed to revise the list of voters for the borough of Cambridge.

## CASE.

S. Austin was, in the month of November, 1843, appointed by the postmaster-general to carry letters from Cambridge to Waterbeach, and to receive the postage due on the letters so carried; he made a declaration that he was employed in the business above mentioned for above three months, and resigned his office in March, 1844.

It was contended, that, by virtue of several statutes, and especially of 22 Geo. III. c. 41, and 6 & 7 Vict. c. 18, s. 40, the name of S. Austin ought to be expunged from the list of voters.

The barrister decided otherwise, and retained the name.

*Gunning* for the appellant. By the statutes 22 Geo. III. c. 41 (a), and 6 & 7 Vict. c. 18 (b), Austin was disqualified from voting, being a person employed by or under the postmaster-general. Nor could his name be

(a) "No postmaster, postmaster-general, or his or their deputy or deputies, or any person employed by or under him or them in receiving, collecting or managing the revenue of the post office or any part thereof, (&c.) shall be capable of giving his vote for the election of any knight of the shire to serve in parliament for any county, borough, &c."

(b) "In case it shall be proved that a person (whose name is in the list) was then incapacitated by any law or statute from voting in the election of members to serve in parliament, the revising barrister shall expunge the name of every such person from the said list."

left on the list by the revising barrister when his incapacity was once proved, though the effect might be to disfranchise him for a longer period than twelve months after he has ceased to hold his office. Individual cases of hardship or inconvenience frequently occur from the operation of a general law, but they cannot contravene a law so clearly expressed as is sect. 40 of the recent statute.

1844.


COOPER  
and  
HARRIS.

No counsel appeared for the respondent.

TINDAL, C. J.—We entertain no doubt that the revising barrister's decision was erroneous, and must be reversed. If an election had occurred before the month of March, 1845, and this person's name remained on the list, he could not have been prevented from voting, though rendered incompetent expressly by statute (a).

Decision reversed.

(a) Vide the latter part of sect. 1 of stat. 22 Geo. 3, c. 41: "If any person hereby made incapable (that is, by holding office under the post-master-general, &c.) shall presume to give his vote during the time he shall hold, or within twelve calendar months after he shall cease to hold office as aforesaid, such vote shall be null and void, &c."



1844.

NUNN, *Appellant*, and DENTON, *Respondent*.

The lower part of a building was used as a stable and cow-house, over which, and communicating by a staircase, was a room (furnished), containing a fire-place and window, occupied by a servant of the claimant's agent. Held, that this is a house within the 2 W. 4, c. 45, s. 27, and that the occupation was sufficient. Held, also, that an objection to the description of the voter's place of abode, if not taken before the revising barrister, will not be heard by the Court on appeal.

THE respondent's name appeared in the list of persons entitled to vote in the election of members for the borough of Bury, in respect of the occupation of property in the parish of Saint Mary, as follows :—

## CASE.

Christian Name and Surname.	Place of Abode.	Nature of Qualification.	Name of Street, &c. where situate.
William Denton.	Rushbrooke.	Building and Land.	Haberdon.

The respondent also duly claimed to be inserted in the said list in respect of the occupation of the same property as follows :

Christian Name and Surname.	Place of Abode.	Nature of Qualification.	Name of Street, &c. where situate.
William Denton.	Rushbrooke.	House and land.	Haberdon.

The respondent, who was duly objected to in both cases by the appellant, appeared in support of his claim to be retained, or to be inserted in the said list. It appeared that at Michaelmas, 1838, the respondent and John Frederick Denton, Henry John Hasted and John Thomas Ord, jointly hired a piece of pasture land in the said parish for seven years, at a rent of £63 per annum.

That shortly afterwards they erected a building on the said land at an expense of £45. The lower part

consisted of a cow-house and stable; over the stable was a chamber about twelve feet square, in which was a fire-place and window; there was a staircase from the stable to the chamber; and the only entrance to the building was by folding doors opening into the cow-house. The chamber was furnished with a bed and chairs by the respondent and his co-lessees. The pasture was used for taking in the cattle of persons in the neighbourhood to agist at a certain price per head per week, some cattle belonging to the respondent were also agisted there.

When the parties hired the land, they employed a person named Clarke to collect the money paid for agistment, and it was arranged between them that Clarke should find some person to reside in the building in question to keep the keys of the gate of the pasture, and look after the cattle, he, Clarke, residing too far off to do so himself. Clarke accordingly put his *brother-in-law, Betts, into the building*; he maintained Betts but paid him no wages; Betts resided and slept in the chamber in the building, and kept the key of the pasture, looked after the cattle, and occasionally received the agistment money. The lower part of the building was sometimes used by the cattle when ill, the cows were occasionally milked there, and the respondent and some of his co-lessees put their horses in the stable, each of the four lessees had a key to the doors of the building. The building was suitable for the purpose for which it was used, it was conveniently placed for the occupation of the pasture, and it was necessary that some person should reside on or near to the gate of the pasture to look after the cattle and to prevent the owners from taking them away without paying for the agistment.

1844.

---

NUNN  
and  
DENTON.

1844.

---

 NUNN  
and  
DENTON.

The building continued in the same state until December, 1843, when part of the stable was converted into a room, having a fire-place and a door opening into the pasture, and Betts continued to reside in the building, and the pasture was occupied as before. The respondent proved that he was a duly qualified voter for the said borough, subject to the questions hereinafter mentioned.

Barrister's  
decision.

The revising barrister expunged the name of the respondent from the list of voters in respect of the qualification "building and land," on the ground that the building was a house and should have been so described. And he inserted his name in the list in respect of the qualification "house and land," as claimed by him.

Question.

If the Court of Common Pleas shall be of opinion that the said building and land were not occupied by the respondent and his co-lessees within the 27th section of the 2 Will. IV. c. 45, the list is to be amended by expunging the name of the respondent therefrom.

If the Court shall be of opinion that the building and land were occupied by the respondent and his co-lessees, and that his qualification was properly described as "building and land," the list is to be amended by expunging the name of the respondent in respect of the qualification "house and land," and inserting his name as it originally stood in the list in respect of the qualification "building and land."

If the court shall be of opinion that the building and land were occupied by the respondent and his co-lessees, and that his qualification was properly described in his claim as "house and land," the list is not to be amended.

*Munning*, Serjt., for the appellant, argued that the



respondent had neither occupied a building nor a house for twelve months, and had therefore no franchise. Whatever the building may have been prior to December in the year 1843, it ceased then at all events to be a building within the 27th section of the statute 2 Will. IV. c. 45. It was at that date converted into a house, and there has been no sufficient occupation of it.

1844.

---

NUNN  
and  
DENTON.

[*Maule, J.* Does it make any difference to the house or the occupation of it, that there was a coach-house under it? The barrister has decided that it is a house.]

Then, if a house, there has been no occupation by the respondent. He never slept there, nor did his servant, but only a servant of his agent.

[*Tindal, C. J.* The land is agisted, and a servant is put into the house to attend to them.]

Then the place of abode is not sufficiently described: "Rushbrooke" may be in Cornwall.

[*Tindal, C. J.* The point was not taken. The barrister is to state the facts of the matter appealed against and his decision thereon, by the 42nd section of 6 Vict. c. 18.]

*Byles, Serjt.*, for the respondent, was not heard.

TINDAL, C. J.—The appellant has no right to make the last objection, as it was not taken on the hearing before the revising barrister. There can be no doubt that this is a house within sect. 27 of 2 Will. IV. c. 45. It was occupied and furnished in the usual way. The decision must be affirmed, and, in so clear a case, with costs.

Decision affirmed.

---

1844.

**HINTON, Appellant, and Town Clerk of WENLOCK,  
Respondent.**

If a revising barrister omits to state a fact in a case, because he deems it immaterial, the Court have no power under section 65 of 6 Vict. c. 18, to remit the case to him in order to its amendment in that respect. *Quære*, If a mandamus would lie? *Seemle*, per Maule, J., it would.

**THIS** was a rule, calling upon the respondent to show cause why a case stated by a revising barrister should not be sent back, for the purpose of the barrister correcting the same by the addition of a fact, omitted by him as immaterial, but which was deemed material by the appellant, on whose behalf this rule was moved.

*Keating* moved upon an affidavit, which stated that the fact now sought to be added was duly proved before the barrister, and argued that section 65 of the statute 6 Vict. c. 18, enabled the Court to remit this case to the barrister, "in order to its being more fully stated." The omission of this fact prevented the Court giving judgment in law, or at least, probably, not the same judgment upon the case as they otherwise would.

**TINDAL, C. J.**—We should be assuming a jurisdiction that is not given to us by the statute, if we were to comply with this application. There is no obscurity in the statement of facts, nor do they appear to be insufficient for the purpose of our deciding upon the law that is applicable to them. The 42d section leaves the materiality of the fact to the discretion of the barrister expressly. And the 65th section only enables us to remit a case that is so insufficiently stated as to disable us from giving judgment in law upon it.

**MAULE, J.**—The judgment of the barrister as to the facts appears to be final according to the terms of the

42d section. It is possible that he might be reached by a mandamus.

1844.

HINTON  
and  
Town Clerk of  
WENLOCK.

Rule refused.

PITTS, *Appellant*, and SMEDLEY, *Respondent*.

THIS was an appeal from the decision of the revising barrister appointed to revise the list of voters for the city of Westminster.

The appellant occupied two floors of a house, in part of which the landlord resided with his family; they were rated jointly by name. The appellant had a latch-key to one lock of the street door, which was occasionally fastened by a second, and then the appellant entered the house through the shop, which was in the occupation of the landlord: Held, an insufficient occupation to confer a vote under 2 Will. 4, c. 45, s. 27.

#### CASE.

C. Marshall is owner of a house and shop, No. 17, Catherine Street, Strand. He occupies the shop and first floor: he lets the other floors to several lodgers.

S. Pitts rents the second and third floors at a weekly rent, amounting to 26*l.* a year. He has exclusive controul over these rooms, and has the keys thereof in his possession. He has also a latch-key to the street door, by which he lets himself in at night. There are other lodgers in the house; to some of whom the landlord gives latch-keys; but he sometimes has young men as lodgers, and to these the landlord does not intrust latch-keys.

Claimant's right of egress and ingress has never been interfered with by the landlord. There is another lock to the entrance door, but he has never seen the key of it. When he has found the street door fastened, he has entered the house through Marshall's shop. Pitt's name appears along with Marshall's upon the rate made in 1843, and upon the subsequent rates. There was no rate made between April, 1843, and November, 1843. C. Marshall, the landlord, not only occupied the ground

1844.

---

PITTS  
and  
SMEDLEY.  
Objection.  
Barrister's  
decision.

floor as a coffee shop, but also resided with his family on the premises.

It was objected that Pitts had not such an exclusive occupation as to confer the franchise. The revising barrister was of that opinion, and decided accordingly.

*Cockburn* for the appellant. Pitts occupied his two floors exclusively, and was rated when any rates were made.

The present case is not distinguishable in principle from the one already decided (*a*) by this Court. The fact that the landlord and his family were inmates of the same house, occupying a distinct portion of it, makes no difference. The question is, had the appellant an exclusive occupation of any portion of the house? The case finding that he had, and kept the key, the landlord would have been a trespasser if he had entered the appellant's rooms. It is not the case of a mere lodger.

*Merewether* appeared for the respondent, but was not called upon.

TINDAL, C. J.—It appears that the landlord resided with his family in the house, but allowed the appellant to occupy two floors. The enjoyment by the appellant is only a limited one; for, according to the case, the street door is sometimes fastened with a second lock; and at such times the tenant cannot enter by that way, having only a latch-key, but no other control over the fastening of the door. How can it be said that such an occupation is exclusive? There appears to be just such an enjoyment as a lodger has, and no more. I think the barrister was quite right in his decision.

Decision affirmed.

(*a*) *Wright v. Town Clerk of Stockport*, 1 P. & R. Reg. Ca. ante, p. 21.

1844.

WHITHORN, *Appellant*, and TOWN CLERK OF  
TEWKESBURY, *Respondent*.

THIS was an appeal from the decision of the revising barrister for the borough of Tewkesbury, who had refused to place the appellant on the list of voters for that borough.

The claimant was proved to be entitled to have his name inserted in the list of freemen for the borough of Tewkesbury, if he had resided within the said borough, or within seven miles thereof, within the meaning of the statute 2 Will. 4, c. 45, and whether the claimant did so reside or not was the question for the opinion of the Court.

CASE.

The claimant was a wine merchant, residing and carrying on his business at Gloucester, more than seven miles from the borough of Tewkesbury, where he had for many years occupied a house in which he carried on his business, and also bonding vaults for the bulk of his stock. He was a married man, and kept one domestic servant at his house at Gloucester. With the object of qualifying himself to vote for the borough of Tewkesbury, the claimant had, since the year 1841, paid to Mr. Sproule, a friend of his, and also agent for one of the sitting members of the borough, the sum of 9*d.* per week for the use of a furnished bedroom in Mr. Sproule's house, situate within the said borough, and also a closet about six feet by three feet, without a window, of which closet the claimant kept the key, and between January and July, 1844, had kept some wine-samples in it. During the same period he had slept in the bedroom twelve times, and during the year ending July, 1844,

The residence required by the statute 2 Will. 4, c. 45, to entitle a person to be registered as a freeman of a city or borough must be an actual occupation (*animo residenti*) by himself or his family or servants; and, *semble*, the revising barrister's decision upon facts is conclusive, unless the latter are necessarily inconsistent with it.  
Per *Maule, J.*

1844.

---

WHITHORN  
and  
TOWN CLERK OF  
TEWKESBURY.

sixteen times, on the occasions of his coming to Tewkesbury on business, but had never taken his meals at Mr. Sproule's house, except on some occasions, when invited to dine as a friend. Mr. Sproule never let lodgings to any other persons, and made the above arrangement with the claimant for the purpose of assisting him to qualify as a voter for the borough.

Revising barrister's decision.

The revising barrister decided that the claimant had not resided within the borough of Tewkesbury within the meaning of the statute 2 Will. 4, c. 45, so as to entitle him to be placed upon the list of freemen for the said borough. If the Court should be of a contrary opinion, then the name of the claimant was to be placed upon the said list.

*Byles*, Serjt. for the appellant, contended that his name ought to be inserted on the list of voters as a resident freeman. It is immaterial what the motive of the residence was; even taking a residence expressly with the object of qualifying as a voter cannot prejudice the right, and is no ground of objection to a voter's claim. *R. v. Sargent (a)*. There is no *mala fides*. *Colonel Chayter's case (b)*. [*Tindal*, C. J.—The motive of itself is no objection. You may state that case as part of your argument, but the decision of a committee of the House of Commons cannot bind us.] Then as to the nature of the residence. These facts bring the case within those of a "coming to settle," within 13 & 14 Car. 2, c. 12. *The King v. Castleton (c)*; *R. v. Brighthelmstone (d)*.

As to the degrees of residence. The claimant always intended to occupy; and did so in fact whenever he had

(a) 5 Term Rep. 466.

(c) Burr. S. C. 569.

(b) 1 Peck. E. Cases, 64, 389.

(d) 5 Term Rep. 188.

business at Tewkesbury. [*Maule*, J. There was no *animus revertendi*.] It is not requisite that he should sleep there more often than he did, viz., sixteen nights in the year. In cases like the present, there is insured some previous connection with the borough, in order to possess this right as a freeman.

1844.  
WHITHORN  
and  
TOWN CLERK OF  
TEWKESBURY.

*Cockburn* for the respondent. The 32d section of the Reform Act was intended to prevent non-resident freemen from swamping the votes of resident voters; and the argument is unfounded, that it would not be dangerous to admit these voters. The question is one, more of fact than law; and the facts clearly establish that the claimant's residence in Tewkesbury was colourable only. He makes use of this room as he would of an inn, having no exclusive occupation, and not in the habit of taking his meals there. His wife lived at Gloucester. "*Ubi uxor ibi domus*."

The definition of "reside" is to be found in *R. v. Northcurry* (a), as the place "where an individual eats, drinks and sleeps, or where his family or servants eat, drink and sleep." Applying this definition, the residence of the claimant was really at Gloucester. *R. v. Duke of Richmond* (b).

*Byles*, Serjt. in reply. Fraud is never presumed, and none is proved here.

It may be admitted that Gloucester was the claimant's domicile; but many persons have two residences, and so had the claimant. He referred to *Story's Conflict of Laws*, ss. 41 and 43.

TINDAL, C. J.—This question arises upon the 32d

(a) 4 B. & C. 959.

(b) 6 T. R. 560.

1844.

WHITHORN  
and  
TOWN CLERK OF  
TEWKESBURY.

section of the statute 2 Will. 4, c. 45, by the proviso to which it is enacted, that in order to entitle a person to be registered as a freeman of a city or borough, he must have "resided for six calendar months next previous to the last day of July in such year within such city or borough, or within seven statute miles from the place where the poll for such city or borough shall heretofore have been taken." And the question is, whether, on the facts stated in this case, we can see enough to say that the revising barrister has improperly decided that the appellant's residence was not within the borough, and that, in point of law, the facts stated show a sufficient residence within the statute. I think the law requires no such conclusion to be drawn from these facts. I do not mean to say that the object and motive of the claimant, viz., that of obtaining the franchise, can detract from his legal right to be placed on the register, if the facts show that there was an actual residence; but at the same time the claimant's motive may be considered in determining whether there was a real and *bonâ fide* residence. Then what are the facts? That the appellant had a residence and domicile at Gloucester is clear. There his wife and family resided, and his business was conducted and carried on by himself. The facts as to Tewkesbury are, that he pays to an agent of a sitting member 9*d.* a week for the use of a furnished bedroom, and a small closet, six feet by three, of which he keeps the key, and in which he has placed some wine samples. It appears too that between January and July he slept in the bedroom twelve times; and during the whole year, ending in July, 1844, sixteen times. Now the mere payment of rent, or its equivalent, would not make him a resident within the meaning of the legislature, nor would the mere occupation of the closet, keeping the



key, be sufficient. Residence is something more than that. It must mean actual occupation by himself or by his family, or household. There must be an *animus residendi*. Can it be said that this appears from the facts stated in the case? The claimant has slept sixteen times during twelve months. It is not stated how the four nights during which he slept there, between August and December, 1843, were distributed, except that they fell within the first half of the year ending July, 1844, and as to the other twelve, they were within the last half year ending in July. It is consistent with the case that the four were the first four nights of the half year, and that the twelve nights were the twelve immediately preceding the 31st July, 1844. Some discretion must be vested in the person adjudicating upon such facts; and I can see no reason for our saying, in opposition to the decision of the revising barrister, that on this dry state of facts there was, in point of law, a residence by the claimant within the borough. Finding nothing more than I have stated, I agree with the revising barrister in his conclusion, and his decision must be affirmed.

1844.

---

WHITHORN  
and  
TOWN CLERK OF  
TEWKESBURY.

COLTMAN, J.—I quite agree that there is nothing in these facts from which it must be necessarily implied in law that the claimant's residence was within the borough of Tewkesbury. No doubt a man may have two residences or more; but the fact that the claimant's wife and family were domiciled at his house at Gloucester, is a circumstance not to be lost sight of, in determining the nature of the residence or sleeping at Tewkesbury, and whether it was real and *bonâ fide* or colourable only. The motive of the claimant in taking this room and closet is certainly no objection of itself to his gaining the franchise, but it is also a material ingredient in con-

1844.

---

WHITHORN  
and  
TOWN CLERK OF  
TEWKESBURY.

sidering the *animus residendi*, and, according to my view, throws material light upon the point at issue. I agree with the decision of the barrister.

MAULE, J.—This appears to me to be a clear case. The revising barrister has decided upon the facts that there was no residence within the borough of Tewkesbury; and unless the facts stated are quite inconsistent with his decision, I think it should be considered binding upon us. But without knowing the barrister's decision, my mind would have been led at once to decide upon these facts, that they establish no sufficient residence in Tewkesbury to entitle the claimant to a vote for that borough. "Residence" is not a word having a technical signification, but a popular one in the language of the country, and is to be interpreted according to its ordinary sense. "Inhabitant," on the contrary, has a technical meaning in acts of parliament, and requires a different interpretation from what it might otherwise receive. But who could doubt this claimant's actual residence in Gloucester, and his non-residence at Tewkesbury? Certainly no one but a lawyer; and I see nothing to oblige us as a matter of law to decide otherwise. This appears so clear a case that I cannot entertain a doubt about the propriety of the barrister's decision, which ought to be affirmed with costs.

ERLE, J.—The question appears to be, whether the revising barrister was legally bound to have come to the opposite conclusion to that at which he arrived on these facts, and I think he was not, but that he held rightly that there was no residence within the meaning of this statute. The word "resident" has been differently used in different statutes; but I am not aware that similar

facts to these have ever been held to constitute a residence. The very object of this statute was to prevent strangers overpowering the local interest of the residents ; and there is nothing in the facts of this case to suggest any idea which is ordinarily attached to home. It does not even appear that this claimant had the exclusive use of his bedroom ; he might have slept as often at an inn, and it would have been as much proof of residence. The fact of his having the key of the small closet does not much help the case. There was no occupation by the wife and family, which alone, in the absence of the husband, might constitute a residence, if his absence were on account of business or illness, and he had an *animus revertendi* ; but nothing of the kind appears, or any facts at all sufficient to make him a resident.

1844.

WHITHORN  
and  
TOWN CLERK OF  
TEWKESBURY.

Decision affirmed, with costs.

NETTLETON, *Appellant*, and BURREL, *Respondent*.

*KINGLAKE*, Sejt., applied for leave to enter this appeal. He produced an affidavit, which stated that the appellant had duly objected, before the revising barrister for the borough of Wakefield, to the vote of the respondent ; that the name was retained on the list, and that thereupon due notice was given of the intention to appeal ; that the barrister consented to grant a case, but desired that the statement of facts should be prepared between the parties for his approval. This was done, and the statement signed by each party was submitted to the barrister, who approved the same, but handed it back, suggesting an alteration in the form of the state-

The Court will not allow an appeal to be entered, which has not been finally approved (and *semble*, signed also,) by the revising barrister.

1844.  
NEITLETON  
and  
BURRELL.

ment. The case altered as so suggested was sent to the barrister, who died while it was in his possession, and without having signed it. He argued that the statute was only directory as to the signature of the barrister (*a*). His approval of the case was the only important requisite, and that had been procured, as appeared by the affidavit now produced.

*Channell*, Serjt., *contrà*, was stopped.

TINDAL, C. J.—The barrister's approbation of the case is not made out, and that, at all events, cannot be dispensed with. It is unnecessary to look further at present; for while the thing is *in fieri*, and not fully approved by the barrister, we have no jurisdiction to deal with it. The absence of his signature raises a presumption that he intended to make some alteration.

Application refused.

(*a*) Section 42 of 6 Vict. c. 18. "And the barrister shall read the statement to the appellant in open Court, and shall then and there sign the same."

MOSS, *Appellant*, and OVERSEERS OF ST. MARY,  
LICHFIELD, *Respondent*.

J. B. M. and W. M. were joint occupants of property in a city. For two out of three rates J. B. M. was not named

THIS was an appeal from the decision of the revising barrister for the city and county of Lichfield.

#### CASE.

John B. Moss claimed as occupier of building and land in the rate, but W. M. alone. All three rates were paid by J. B. M. The overseers were not aware, at the time of making or receiving the two first rates, that J. B. M. was a joint occupier of the property. Held, that J. B. M. was not qualified to vote; that the omission of his name from the two rates was not merely an inaccurate description, and that he had not been *bonâ fide* called upon to pay them, within 6 Vict. c. 68, s. 75.

situate at Glass Croft in the parish of St. Mary, Lichfield. In support of his claim it was proved that the claimant occupied jointly with his father, William Moss, a building together with land of a nature to confer the franchise within the provisions of the 27th section of stat. 2 Will. 4, c. 45, and that the claimant and the said William Moss had occupied the same jointly for more than twelve calendar months next previous to the last day of July, 1844, as tenants thereof under the same landlord, at the annual rent of £40 and upwards, and that both of them, the claimant and the said William Moss, would be entitled to have their names inserted in respect of their occupation of the building and land, provided they were both of them duly rated in respect of the same to all rates for the relief of the poor of the said parish, made during the time of their joint occupation as aforesaid. There were three rates made for the relief of the poor of the said parish during the said period, in the first and second of which the name of the said William Moss alone was inserted as the person rated in respect of the said premises, and the name of the claimant was wholly omitted from both of the last-mentioned rates in respect of the said premises, but to the third rate the claimant was rated, and his name, jointly with the name of the said William Moss, was inserted in the last-mentioned rate in respect of the said premises. The claimant, being the person liable to be rated for the said premises jointly with his father, had *bonâ fide* paid with his own hand to the collector the two first-mentioned rates, and all sums of money due for rates in respect of such premises during the joint occupation aforesaid, but the overseers of the said parish were not aware, till the beginning of May, 1844, and after such payment by the claimant of the first and second rates, that the claimant did occupy

1844.

---

Moss  
and  
OVERSEERS OF  
ST. MARY,  
LICHFIELD.

1844.

the said premises jointly with his father, the said William Moss.

Moss  
and  
OVERSEERS OF  
ST. MARY,  
LICHFIELD.  
Objection.

It was contended that by virtue of the 27th sect. of stat. 6 Vict. c. 18, the claimant ought, under the above circumstances, to be considered as having been rated and as having paid all rates in respect of the said premises within the meaning of the 27th sect. of stat. 2 Will. 4, c. 45, and that he was entitled to have his name inserted in the said list in respect of the premises aforesaid. The barrister was of opinion that the omission of the name of the claimant under the above circumstances did not constitute a misnomer or inaccurate, or insufficient description in the said rate of the person occupying the said premises within the meaning of the statute 6 Vict. c. 18, s. 75, and was of opinion on the whole case that the claim of the said J. B. Moss had not been made out.

Barrister's  
opinion.

Question.

The question for the opinion of the Court is, whether, under the provisions of statute 6 Vict. c. 18, s. 75, the claimant ought to be considered as having been rated and having paid all rates in respect of the said premises within the meaning of stat. 2 Will. 4, c. 45, s. 27.

*Byles*, Serjt. for the appellant. The claimant has been virtually rated and has actually paid the rates. The statute of 6 Vict. c. 18, s. 75, was intended to cure such cases as the present, viz. an inaccurate description or misnomer in the rate of a person occupying premises liable to be rated. The appellant has been called upon to pay. The father and son constituted a partnership, and calling upon any member of the firm is a calling upon the firm. The case of *Reg. v. Hulme (a)* is in point. The question arose upon the 4 & 5 Will. 4, c. 76. [*Maule*, J. There was this difference ; no other

(a) 4 Q. B. 538.

person was charged with the rate in that case, here another person was charged. *Erle, J.* If a firm is charged, each partner is intended to be charged, but the intention here was to charge another person, and not the appellant.]

1844.

Moss  
and  
OVERSEERS OF  
ST. MARY,  
LICHFIELD.

*Kinglake, Serjt.*, for the respondent was not heard.

**TINDAL, C. J.**—The 75th section of the 6 Vict. c. 18, does not help this case, it provides only for misnomers and inaccurate or insufficient descriptions in a rate of the occupiers of premises, but here some other party has been charged in the rate. Two things must concur to give the right to vote. The party must have been *bonâ fide called upon* to pay, and must have *bonâ fide* paid the rates.

**COLTMAN, J.**—The appellant was not called upon to pay the rates nor was he named in the rate, such a case is not cured by the 75th section.

**MAULE, J.**—The 75th section only applies to a mis-description. Here the appellant was not called upon to pay the rates, but some other person was.

**ERLE, J.**—The question is as to the intention of the overseer, and he, it seems, had charged another party.

Decision affirmed, without costs.



1844.

*DAVIS, Appellant, and WADDINGTON, Respondent.*

An estate was given by will, for founding a hospital, to five trustees, who were incorporated by letters-patent by the name of the Governors of Jesus Hospital. The governors were directed to receive the rent of the estate, and pay to the principal 35*l.* per ann., and to each inmate 6*s.* per week. In accordance with the bye-laws now in force, the principal is elected by the majority of the governors, and the inmates by each governor in rotation. The principal has a house and garden within the hospital, and each inmate has a room and piece of ground for his separate use, of a value exceeding 40*s.* per ann. By the charter of incorporation, the governors for the time being have power to remove the said principal and inmates "so often as it shall seem to be convenient to them or the greater number of them." Held, that the principal and inmates take no estate of freehold, but hold merely at the discretion of the governors, and therefore are not entitled to the county franchise under 6 Vict. c. 18, s. 74.

**THIS** was an appeal against the decision of the revising barrister for the northern division of the county of Northampton.

Thomas Waddington duly objected to the name of Thomas Davis, which appeared on the list of claimants for the parish of Rothwell as follows:—

Davis, Thomas.	Rothwell.	Freehold houses, lands and gardens, as Principal of Jesus Hospital.	Emoluments arising out of freehold houses and lands belonging to Jesus Hospital, Rothwell, in the occupation of himself, Robert Stafford and others.
----------------	-----------	---	--

He also duly objected to the name of Robert Burbage, which appeared on the same list as follows:—

Burbage, Robert.	Rothwell.	Freehold appointment as inmate of Jesus Hospital.	Emoluments arising out of freehold houses and lands belonging to Jesus Hospital, Rothwell, in the occupation of myself, Robert Stafford and others.
------------------	-----------	---	---

He also objected to twenty-three other names appearing on the said list, whose qualifications were described in like manner; and a consolidated appeal was reserved upon the following

**CASE.**

It appears that one Owen Ragsdale, deceased, left his estate for founding an hospital, at Rothwell, to five

Held, that the principal and inmates take no estate of freehold, but hold merely at the discretion of the governors, and therefore are not entitled to the county franchise under 6 Vict. c. 18, s. 74.



trustees, who were incorporated by the name of the Governors of Jesus Hospital, Rothwell, by letters-patent bearing date the thirty-eighth year of Elizabeth. That the governors receive the rents of the estates, and pay to the principal and inmates of the hospital as follows : to the principal thirty-five pounds per annum, and to each inmate six shillings per week. There are now twenty-six inmates, two having been added to the number of twenty-four, by recommendation of the charity commissioners.

That in accordance with the bye-laws made by the original governors, and now in force, the principal is elected by the majority of the governors, and the inmates by each governor in rotation. The appointments are in writing, and generally in the following form :—

“To A. B., principal of Jesus Hospital, in Rothwell, in the county of Northampton.

“Whereas C. D., a poor man, late of your said hospital, is dead, you, the said principal, are hereby to admit E. F., of R., in the hundred of —, in the said county, into your said hospital, in the room and place of the said C. D., deceased, it being my turn, as one of the governors thereof, to appoint a poor man to be placed in the said hospital, upon a vacancy, and for so doing this shall be to you a sufficient warrant.

“Given under my hand and seal this — day of —, 18—.”

No instance is recorded of any principal or inmate having been expelled the hospital.

The principal has a house and garden within the hospital, and each inmate on his appointment is provided with a room and piece of ground for his own separate use, of the value of more than forty shillings per annum, which is generally the room and garden of

1844.

DAVIS  
and  
WADDINGTON.

1844.

---

DAVIS  
and  
WADDINGTON.

the person whose death gave occasion for his appointment; but the principal exercises a discretion as to the room which the new comer is to use.

There are also four halls in common to the inmates.

The charter of incorporation sets forth the power of the governors then being, and their successors, and a majority of them, "to elect, nominate, and assign, appoint, license, deprive, expel, and remove the said principal and twenty-four poor and infirm men in the said hospital in Rothwell, in the county of Northampton, from time to time to be placed there, for the time being, or either of them, so often as it shall seem to be convenient to them or the greater number of them;" (in latin) "*toties quoties sibi aut eorum numero majori conveniens fore videbitur.*"

The said charter further declares, that the governors shall be "able to make fit and wholesome statutes and ordinances in writing concerning and touching the nomination, election, order, government, punishment, expulsion, amotion, and direction of the said principal and twenty-four poor infirm men, and every of them, concerning and touching the stipends and salaries of the same principal and twenty-four poor and infirm men, and every of them, and concerning and touching the order, government, demising, leasing, disposition, recovery, and defence and preservation of the manors, messuages, lands, tenements, and hereditaments, goods and chattels of the aforesaid hospital." It then gives the same powers to the successors of the said governors, and declares that such statutes and ordinances shall not be repugnant, contrary, or derogatory to the laws, statutes, rights, or customs of the kingdom of England.

In pursuance of the power granted by the charter, the original governors made bye laws or statutes for the

election, government, and removal of the principal and poor men in the hospital, by which it was ordained, that no principal or poor man shall be eligible to be admitted unless he be forty years of age at the least, and be unmarried, nor shall they being admitted continue in said hospital unless they continue to be unmarried. The said statutes also ordain, that "when any of the poor or sick men shall die, resign, give over his place, or for any offence or other lawful or reasonable cause be removed," the principal shall give notice to the governor (whose turn it is to nominate a poor man) of the same. That the statute relating to the removal of the poor men orders that "every poor man dwelling in hospital shall work at any trade according to his strength, that is not noisy or noisome, and by no means give himself to idleness, drunkenness, vagrant life, or begging," and the principal "shall inquire and report to the governors which of said poor or sick men shall be idle, and which shall resort to the alehouse or any other house or place of great disorder, to the intent that all said governors, or such governors which, with the most part of the assistants," (the assistants are elected by a majority of the governors, and have no voice in appointing the poor; the governors elect a governor on death or resignation from the assistants,) "shall be at said house at some convenient time by any of governors appointed therefore, after reasonable notice of that time given to all the rest of governors and assistants for that time being to examine the cause, may instantly inflict such punishment upon the offenders by abatement of their wages, expulsion, or otherwise, as they shall think the offence shall deserve."

1844.

---

 DAVIS  
and  
WADDINGTON.

It was objected on behalf of the said Thomas Waddington, that the claimants above mentioned had no

Objection.

1844.  


---

 DAVIS  
 and  
 WADDINGTON.

estate respectively which entitled them to have their names retained upon the list of voters for the said parish of Rothwell, inasmuch as the power of amotion by the governors, contained in the charter of incorporation, and which was not exhausted or limited by the subsequent bye-laws, prevented them respectively from acquiring any estate of freehold by virtue of their appointment.

Barrister's  
 decision.

The revising barrister decided in favour of the objection, and expunged the names from the list; upon which notice of appeal was given on behalf of the said claimants respectively.

*Maunsell* for the appellants. The governors of this hospital are incorporated, and are to appoint its principal and inmates. In the appointments which they make, no mention is made of the estate which the appointees are to take, the appointments are therefore sufficient to confer equitable estates for life, being defeasible only on the infraction of the bye-laws. The charter of incorporation states, that the appointments are to be made "*toties quoties sibi aut eorum numero majori conveniens fore videbitur.*" The word "*conveniens*" cannot be taken as equivalent to the words "*dum bene placito,*" and does not confer any arbitrary power of removal as the latter words would. The bye-laws, which may be regarded as contemporaneous documents to explain words of doubtful import in the charter, support this interpretation. *The Mayor of London v. Long* (a), *Lucton School v. Scarlett* (b). The fact also of no one having ever been expelled establishes a usage which may be referred to for the purposes of explanation. *The*

(a) 1 Campb. 22.

(b) 2 You. & Jer. 330.

*Mayor of Hull v. Horner* (a), *The King v. Varlo* (b), *Blankley v. Winstanley* (c). The bye-laws show that the principal and inmates have an estate for life, conditional only, and the law will not presume an infringement. Cruise's Digest, vol. iii. tit. "Office," s. 27. "If an office be granted to a person *quamdiu se bene gesserit*, the grantee has an estate for life. For as misconduct alone can determine his interest, no one can prefix a shorter time than his life, since it must be by his own act (which the law will not presume) that his estate can determine." [*Tindal*, C. J. Is there any estate at all in the principal and inmates? Is not the estate given to the governors?] The governors are mere trustees; the principal and inmates are the *cestui que trusts* in actual possession of the profits, and therefore they are entitled to vote under 6 Vict. c. 18, s. 74. Dissenting ministers have a sufficient estate for life, as *cestui que trusts*, in the chapels in which they are ministers, and the pew rents of which are paid to them by the trustees.

1844.

---

 DAVIS  
and  
WADDINGTON.

*Byles*, Serjt., for the respondents, contended that the tenure of the inmates is not of such a permanent character as to confer a right to vote; for each inmate, at the time of his appointment, has notice that he shall hold it so long only as it "shall seem to be convenient," and the bye-laws mention many causes of removal, such as marriage, idleness and others. The legal fee simple is in the corporation, and not only the legal but equitable estate also; and this is shown by the words of the charter.

*Maunsell* in reply. The word "*conveniens*" means

(a) Cowp. 102.

(b) Ibid. 248.

(c) 3 Term R. 288.

1844.  
DAVIS  
and  
WADDINGTON.

fit or proper, and the Court will not presume that the parties will act contrary to what is in that sense "*conveniens*." When an estate is granted for an uncertain time, as to a woman "*dum sola fuit*" or "*durante viduitate*," or "*quamdiu se bene gesserit*," the lessee has an estate for life determinable. *Wynne v. Wynne* (a), *Wilkinson v. Malin* (b).

TINDAL, C. J.—I am of opinion that the parties whose votes were objected to in the present case did not take a freehold estate in the property in question. The charter of incorporation of the governors of the hospital contains a power to elect, and also to remove the principal and inmates, and the power of removal is most general; they are to remove "as often as it shall seem to be convenient to them, or the greater number of them." I can scarcely conceive words more general than these. It was contended, that the bye-laws made by the original governors are to be taken as a medium for construing the charter of incorporation; though I do not dissent from this, yet I do not see that those bye-laws carry the case any further, because they state that when any of the inmates "shall die, resign, give over his place, or for any offence or other reasonable cause, be removed," notice shall be given. There is therefore a power reserved to the governors by the bye-laws, of removing for any reasonable cause, and one can conceive many such cases independent of any misconduct; as, for instance, if a party came into the possession of great wealth. I think, therefore, upon the construction both of the charter of incorporation and of the bye-laws, the parties in posses-

(a) 2 Man. & Gr. 8.

(b) Tyrw. 544.

sion took no freehold estate, but were merely holding at the discretion of the governors.

1844.

---

DAVIS  
and  
WADDINGTON.

COLTMAN, J.—The governors having reserved to themselves a right to remove as often as it should occur to be convenient to them, or the greater number of them, did not confer an estate for life upon the parties in question.

MAULE, J.—The question is, whether the appellants had an equitable estate for life, the fee being in the governors. The clause in the charter of incorporation, which gives the power to the governors to elect the inmates, states, that they are “to elect, nominate, and assign, appoint, license, deprive, expel and amove, *toties quoties sibi aut eorum numero majori conveniens fore videbitur.*” The latter words meant the same thing in the reign of Augustus Cæsar as of her present Majesty, and an appointment of a party under those terms confers no estate from which he is not removable at discretion. That the governors thought they were to have considerable discretion under this charter, is clear from the bye-laws, where they make various restrictions, and among others one in respect of marriage. This is not at all like a case where words are used sufficiently effective to confer an estate, and then words of forfeiture are introduced; here the original creation of the interest limits the estate to the discretion of the governors.

ERLE, J.—The appointments in question must be taken to have been made according to the charter, and as if it had been expressed in the appointments that they were for such a time as should seem to be con-

1844.      venient to the governors, or the greater number of them.  
               The bye-laws do not, and could not, restrict the powers  
 DAVIS      of the governors; and nothing is to be inferred from  
               and  
 WADDINGTON.      usage, though the parties had occupied from generation  
                           to generation without a case of removal, except from  
                           death, having occurred. I think, therefore, the appel-  
                           lants are not entitled to a vote in respect of the property  
                           in question.

Appeal dismissed, without costs.

SIMPSON, *Appellant*, and WILKINSON, *Respondent*.

(*Allen's vote.*)

A hospital is governed by printed rules or ordinances made A. D. 1597, which refer to certain feoffees and their heirs, who are unknown. No deed or letters-patent, &c. can be found, nor is any common seal used. No leprous person or drunkard, &c. may be admitted as a bedesman, nor can remain a member of the hospital if he become subject to such infirmities or willfully refuse to observe the ordinances. But there is no instance of any bedesman having been displaced. The hospital, which is a freehold building, is divided into rooms of the annual value of 4*l.*, to each of which a bedesman is appointed by persons in whom the right of nomination is vested, according to the ordinances by which the hospital is governed.

THIS was a consolidated appeal from the decision of the revising barrister for the northern division of the county of Northampton, and he stated the following case for the opinion of the Court :

#### CASE.

Daunbecy Simpson, of Peterborough, in the said county, on the register of voters for the said northern division, duly objected to the name of Henry Allen being retained on the register of voters for the said northern division of the county of Northampton; the

nor can remain a member of the hospital if he become subject to such infirmities or willfully refuse to observe the ordinances. But there is no instance of any bedesman having been displaced. The hospital, which is a freehold building, is divided into rooms of the annual value of 4*l.*, to each of which a bedesman is appointed by persons in whom the right of nomination is vested, according to the ordinances by which the hospital is governed.

*Held*, that a legal foundation of the hospital, not investing the bedesmen with a corporate capacity, might be presumed, and that they have such an equitable estate as entitles them to a vote for the county.



name and description of the said Henry Allen on the said register for the said northern division was as follows :

1844.

SIMPSON  
and  
WILKINSON.

Name.	Place of Abode.	Nature of Qualification.	St. Martin's Parish.
Henry Allen.	Lord Burghley's Hospital, St. Martin's Stamford Baron.	Freehold Tenement or Room.	Henry Allen, Occupier.

He also objected to the names of twelve other persons whose qualifications on the list of voters were described in like manner, and depended upon the same facts.

Henry Allen was appointed by the Marquis of Exeter to be one of the bedesmen of the hospital hereinafter described, in the room of William Henson, deceased. The following is a copy of the appointment, duly stamped :

" Be it known that the Most Honourable Brownlow Marquis and Earl of Exeter and Baron of Burghley, hath nominated and appointed, and by these presents doth nominate and appoint, Henry Allen, of Stamford, in the county of Lincoln, to be one of the brethren of the hospital in St. Martin's Stamford Baron, in the county of Northampton, in the room and place of William Henson, lately deceased ; and doth hereby require and direct that the said Henry Allen be accordingly admitted into the brotherhood of the said hospital, and have, receive and enjoy all benefits, profits and advantages which as one of the brethren thereof he ought to receive and enjoy. Given under my hand, this 22nd day of May, 1834.

(Signed) EXETER."

In the parish of St. Martin's Stamford Baron is a freehold building called by the names of Burleigh Hospital,

1844.

SIMPSON  
and  
WILKINSON.

or occasionally, St. Martin's Hospital, which is divided into several rooms, each of which is separately inhabited by a bedesmen appointed under rules by which the hospital is governed (a). Each bedesman keeps the key

## (a) "ORDINANCES

"Made by Sir William Cecil, Knight of the Order of the Garter, Baron of Burghley, for the orders and government of thirteen poor men (whereof one to be the warden), of the hospital in Stamford Baron, in the county of Northampton, to remain in a chest in a chamber in the said hospital, locked up with two several locks, the keys whereof to remain in the custody of the vicar of St. Martin's and the bailiff of the manor.

*"Vicesimo Augusti anno trice simo nono Elizabethæ Reginæ,  
Anno Dom. 1597.*

"1st. The first five shall be named, chosen and admitted by me William Lord Burghley during my life, and after by my heir male that shall be owner of my house and Lord Burghley, whereof the foremost shall be called 'The Warden of the Almshouse of the Lord Burghley.'

"2nd. The next four, that is, the sixth, seventh, eighth and ninth, shall be named and admitted by the vicar of St. Martin's for the time being, the bailiff of the manor of Stamford Baron, in the county of Northampton, and the eldest churchwarden of St. Martin's, &c.

"3rd. The last four, viz. tenth, eleventh, twelfth and thirteenth, shall be named and admitted by him that shall be for the time alderman of the borough of Stamford, in the county of Lincoln, &c.

"5th. When the warden and any other of the twelve shall die, or any of their places become void, the place of such as shall die or become void, being either the warden or one of the number of the first four, shall be supplied by the Lord Burghley for the time being, and so the place of any of the second four dying or becoming void shall be supplied by the aforesaid vicar and the parties authorized to name the second company of four, and the like shall be observed by the aldermen of Stamford and the others joined with them, for supplying the places of the last four, as shall from time to time become void.

"10th. None shall be admitted thereto but such as shall have been born in the counties of Northampton, Lincoln or Rutland, or that have dwelt for the space of seven years within seven miles of the borough of Stamford, except the Lord of Burghley shall for some reasonable cause dispense therewith; neither shall any be thereto allowed that are under thirty years of age, or that hath any certainty of living above the value of 53s. 4d. by the year, nor any that is known to be diseased of any leprosy or the pox called the French pox, nor any drunkard, barretor, or infamous for adultery, these and like faults.

"11th. The said poor men shall and may as near as may be chosen out of such as have been either honest soldiers or workmen, as masons,

of his own room, and the successor of each deceased bedesman occupies the same room as did his predecessor. These rooms are on the ground floor. The upper story of the building extends over all the said rooms, and is let as a granary by the warden and bedesmen at an entire rent, which they divide amongst themselves equally. Each room occupied is of the annual value of 4*l.*, independently of the rent received for the granary. The hospital is not rated to any parochial rates, nor are any of the bedesmen rated in respect of

1844.

---

SIMPSON  
and  
WILKINSON.

carpenters or other artizans of handicrafts, or labourers in any work or in husbandry or servants, that are by sickness or any other impediment unable to get their livings by their handwork or by daily service as before time they have done; and if after they shall have been chosen to the places any of them shall fall into such infirmities or infectious diseases, or be justly infamed and convinced of such notable vices as above in the next former article mentioned, they shall be displaced by them on whose authority they were placed, and their allowance to cease within fourteen days after their displacing, against which time their places shall be supplied by such as have displaced them.

"12th. None of the said poor men shall in any alehouse or other places play at cards, dice or any other unlawful game; but if after once warning given to them by the vicar of St. Martin's or of the bailiffs of Stamford Baron, or of the manor of the borough of Stamford, to forbear from such unlawful play, shall be the second time committing such offence prohibited, he shall be removed from his place and shall receive no more weekly relief, except he in acknowledging his fault and promising of amendment, he shall be restored by the said vicar, bailiff and two other of the number that first placed him.

"21st. As these poor men shall have at the first their several rooms allowed them in the almshouse, so shall they during their lives or their continuance in their places continue their lodgings; and every one, as he shall succeed to the void places, so shall he succeed in the lodging without any change.

"22d. All the twelve shall at their entries openly in St. Martin's church promise to be obedient to the warden of the house in all things that he shall advise them for the observation of the orders of these articles prescribed; and if any of them shall wilfully refuse to observe the same, he shall complain thereof to the Lord Burghley for the time being, or in his absence to the vicar and bailiff of the manor, who shall remove such a wilful person from the place whereunto they did first name him, and shall appoint another."

1844.

---

 SIMPSON  
and  
WILKINSON.

their rooms. The said Henry Allen was duly qualified for admission according to the rules and ordinances by which the hospital is governed. No person appointed and admitted as a bedesman has ever been known to be removed during his life. No deed of any description can be found relating to the hospital. All the proper offices and places of deposit have been traced, and no trace of any original rules and ordinances, or of any charter, deed or other document relating to it, has been discovered, neither does any enrolment under the 39 Eliz. c. 5, exist, or any letters-patent. The rules refer to certain feoffees and their heirs, but none are known. It was proved that the hospital was governed strictly by the printed unsigned copy of the rules and ordinances which were produced from the hospital, where they are usually hung up in the common dining-room. There is no trace of any common seal, neither does there appear any record of the warden and brethren suing or being sued in any corporate name, or by any bye-laws made by them, nor have they ever been summoned on juries. The foreman according to the ordinances is called the warden of the almsbouse of Lord Burleigh, and the other twelve the almsmen or bedesmen. The sum of 2*l.* 14*s.* weekly is paid by the steward of the Marquis of Exeter to the warden of the hospital, out of the rents of Cliffe Parks, for himself and the bedesmen. The Marquis of Exeter is the heir male of Sir William Cecil, in the copy of the ordinances mentioned, and the owner of his house and Lord of Burleigh, and has recently repaired the hospital at his own expense.

Objections.

It was contended on the part of the objector, 1st, that if the claimants had any freehold estate, they had such estate only as members of a corporation aggregate; 2dly, that they had no freehold estate at all; 3dly, that

even if they had any freehold estate, it was an estate in joint-tenancy in the hospital, and not a separate and exclusive estate in the room, and that the claims therefore were bad.

1844.

---

 SIMPSON  
and  
WILKINSON.

The revising barrister was of opinion, that under the circumstances a legal foundation might be presumed, not necessarily investing the claimants with a corporate character, and decided that they were respectively entitled to a separate freehold estate in their rooms respectively, and that the name of the said Henry Allen and of the other twelve persons respectively on the list of voters for the said parish of St. Martin's Stamford Baron should be retained. He named Nelson Wilkinson (who was interested in the matter of the said appeal, and consented,) to be respondent.

The barrister's  
opinion.

His decision.

*Byles*, Serjt., for the appellant. The bedesmen of this hospital have not a freehold estate within the meaning of the statutes 8 Hen. 6, c. 7, and 10 Hen. 6, c. 2. [*Hildyard*. We do not contend that they have any legal estate whatever.] Then the question is, have they an equitable estate? It would not be extendible for their debts under the Statute of Frauds, nor under the 1 & 2 Vict. c. 110, s. 11, nor could they mortgage or sell their interest. [*Erle*, J. Could they not after twenty years' possession maintain an action of ejectment?] No, supposing the estate turned out to be vested in trustees. No person, moreover, could legally erect an hospital and incorporate it before the statute of 39 Eliz. c. 5, without letters-patent or a licence from the crown having been first obtained, and this hospital was founded just before the parliament sat by which that statute was passed.

[*Erle*, J. Is it any objection to the claimant's voting that there is a defect in his title?]

1844.

---

SIMPSON  
and  
WILKINSON.

If they are not a corporation aggregate the hospital is a mere charity, and the bedesmen are to be displaced if they should become leprous, drunken, &c. Charity would scarcely be distributed in the shape of a freehold estate; but if the Court should hold this to be a freehold estate, still it is a receipt of alms by the claimant, which would disqualify him from voting under section 36 of 2 Will. 4, c. 45. [*Maule, J.* There is nothing in the case to show that it has been received within twelve calendar months.]

*Hildyard* for the respondent. The main point raised on the other side cannot be entertained by this Court. The question, whether the hospital was founded by feoffment, or whether it was made a corporation, was a question of evidence for the barrister, and he has found that it was by feoffment. This mode of founding an hospital was established by the statute 35 Eliz. c. 7, s. 27. (He was here stopped by the Court.)

TINDAL, C. J.—The only question open to us is, whether the barrister was wrong, in point of law, in saying that there might be some legal commencement to the estate, not investing the claimants with a corporate capacity, and that they were respectively entitled to a freehold estate. I think he was justified not only in law; but that the facts fairly warrant the conclusion he has drawn. As the rules respecting the hospital were made prior to the 39 Eliz., he had a right to presume that things were carried on in the course which the law then allowed. I think, therefore, the barrister was right in his decision.

COLTMAN, J., concurred.

MAULE, J.—The foundation of the hospital was prior to the passing of the 39 Eliz.; and after 250 years, I think a licence from the crown may be presumed. Lord Burleigh would have had no difficulty in getting that licence, and he was not likely to have neglected any necessary precaution. I think, therefore, the parties in question have such an equitable estate as entitles them to vote.

1844.

---

 SIMPSON  
and  
WILKINSON.

Appeal dismissed.

*Hildyard* then applied for costs.

MAULE, J.—I think costs ought to be granted, because I think that in all legal proceedings the party succeeding ought to have his costs.

*Sed per Curiam (Maule, J., dissentiente.)*

Appeal dismissed, without costs.

CUMING, *Appellant*, and JONES, *Respondent*.

THIS was a consolidated appeal from the decision of the revising barrister for the borough of Totness, who stated the following case for the opinion of the Court :

CASE.

F. B. Cuming objected to the name of F. Coaker being retained on the list of persons entitled to vote in the election of members for the said borough. A paper

A notice of objection sent by the post, pursuant to 6 Vict. c. 18, s. 100, need not have been delivered to the postmaster by the person objecting, but it is a sufficient compliance with the act if delivered by his servant or agent.

And in such a case the servant or agent need not produce the duplicate before the revising barrister, as it derives full credit from the post office stamp.

1844.

---

 CUMING  
and  
JONES.

writing, purporting to be a duplicate of the notice of objection, stamped at the post office on the 21st August, 1844, was produced before the barrister.

The said paper had been signed by the objector and compared by him with the original notice, and both were addressed to the voter at his place of abode as described in the said list, and both were delivered by the objector to James Bosson Taylor, his clerk, to take to the post office on the 21st day of August.

The said James Bosson Taylor immediately left the office of the said objector, taking with him the said paper and notice, and returned within the space of a quarter of an hour with the said paper stamped with the post office stamp—"August 21st, 1844." The said notice would in the ordinary course of post have been delivered at the voter's place of abode as described in the said list on or before the 25th day of August, 1844. James Bosson Taylor, being confined by illness, was unable to attend before the revising barrister. It was objected on the part of Francis Coaker, that as such alleged duplicate was produced by the objector himself, and not by the said James Bosson Taylor as "the party who posted the said notice," the service of the said notice was not duly proved; and the revising barrister being of that opinion, retained the name of the voter on the list. The voter did not prove his qualification.

Objection.

The barrister's  
opinion and de-  
cision.

Question.

The question for the opinion of the Court was, whether under the circumstances mentioned in the above statement, the name of the said Francis Coaker was rightly retained on the said list of voters for the said parish of Totness. If the Court should be of that opinion, the register was to stand without amendment. If the Court should be of a contrary opinion, then the register was to



be amended by expunging therefrom the name of the said Francis Coaker (a).

1844.

---

 CUMING  
and  
JONES.

*Cockburn*, for the appellant, argued that the production of the stamped duplicate was sufficient evidence. Credit is given to the stamp, not to the principal or agent who produces it; nor can it matter at all to any person by whom the stamped document is produced—" *qui facit per alium facit per se*"—and therefore this was produced by the party who posted it.

*Kinglake*, Serjt., *contra*. The words in 6 Vict. c. 18, s. 100, are express, and must be explicitly observed; the evidence of the due service of the notice is the production of a stamped duplicate of the notice "*by the party who posted such notice*." It may be material to prove the date of the delivery of the notice to the post-master, and it can only be done by the party who posted it; he may have neglected to carry it to the post in proper time. [*Tindal*, C. J. The stamp of the post office would prove that fact.] Again, the objector should himself deliver the notice of objection at the post office; he is required by the act so to do. [*Erle*, J. That point does not arise in the case laid before us.] The revising barrister having decided that the service of the notice was not duly proved, it is competent to support his decision on any ground.

The notice must be delivered at the post office by the objector in person; the words of section 100 are not "*deliver or cause to be delivered*." If it were intended that this act could be done by deputy, the same lan-

(a) Thirteen votes depended upon this decision.

1844.

CUMING  
and  
JONES.

guage would be used for that purpose as in sections 3, 47 and 48.

*Cockburn* in reply was stopped.

TINDAL, C. J.—I can discover no reason for holding that the well established legal maxim, “*qui facit per alium facit per se*,” is not applicable to this case. If any mischief could be suggested as likely to arise from holding that the objector may do by the hands of his agent or servant what it is clear he may do himself, there might be some foundation for the argument urged to us on behalf of the respondent; but the fact is, that the whole faith and credit given to the duplicate notice is given to the stamp of the post office, impressed upon it by the direction of the statute; and that faith is precisely the same whether the notice be produced before the barrister by the principal who signed the notice of objection, or by his clerk who posted it. It seems to me to be going out of the way to create a difficulty, to contend that a party objecting should not be at liberty to send this notice of objection to the post by his clerk, as he would any other letter in the course of his business.

COLTMAN, J.—We had a good deal of discussion upon this section of the statute in the case of *Allen v. Waterhouse* (a), where the question was, whether the production before the revising barrister of a notice of objection which had been delivered open and in duplicate to a postmaster’s managing clerk instead of to the postmaster

(a) *Ante*, part i. p. 58; and for the sect. of the stat. *ibid.* n. (b).

himself, was sufficient proof of the due service of the notice of objection. The Court, after much deliberation, held that it was sufficient, because the production of the duplicate so stamped answered all the purposes and requisitions of the statute. That case is an authority for our holding that the production of the stamped duplicate in this case was sufficient. No inconvenience has been suggested, or is likely to arise, from our so holding; I can imagine that much might follow from an opposite conclusion.

1844.

---

CUMING  
and  
JONES.

MAULE, J.—It would require strong words in the section of the act, or proof of manifest inconvenience to be avoided, to induce me to hold that the common rule, which does not require service to be personal by the party on whose behalf the service is made, did not apply here. I see nothing in this act of parliament to justify the rigid construction for which the respondent contends. It would be defeating a very valuable provision of the act if we were to decide that the party posting the notice must personally appear before the barrister. The consequence of such a decision would be, that proof of the service of notice of objection would always fail where the party who posted it was prevented by illness or any other cause from attending at the Court of Revision. The legislature never intended anything of the kind.

ERLE, J.—I am of the same opinion. The statute directs that “wherever any person shall be desirous of sending a notice of objection by the post, he shall deliver the same, &c. to the postmaster,” &c. I think that direction is complied with if the notice be delivered

1844.

CUMING  
and  
JONES.

by the hand of his agent or servant. So where the statute says "that the production by the party who posted such notice, &c. shall be evidence," &c., it is sufficiently observed if the stamped duplicate be produced by the party who caused such notice to be posted. The maxim "*qui facit per alium facit per se*" applies. It may be that in other sections of the statute there are the words "deliver, or cause to be delivered," &c.; but the words "cause to be delivered," are only added *ex majori cautela*.

Decision reversed.

TOMS, *Appellant*, and CUMING, *Respondent*.

A stamped duplicate notice of objection was signed by an agent of the objector, but the notice sent by the post was signed by the objector himself, and both were examined by him. Held an insufficient service of a notice of objection under sec. 100 of 6 Vict. c. 18.

THIS was a consolidated appeal from the decision of the revising barrister for the borough of Totness.

#### CASE.

Henry Toms, of Fore Street, Totness, on the list of voters for the parish of Totness, in the said borough, objected to the name of S. Angle being retained on the list of persons entitled to vote in the election of members for the said borough. The notice of objection had been signed by the objector himself, and a copy thereof had been signed with the name of the objector by one W. B. Hannaford, by his direction and in his presence, and both were addressed to the said S. Angle at his place of abode as described in the said list. The said notice and copy were examined by the said objector, and were by him taken to the postmaster at Totness on the 23d day of August last, and compared and stamped by the postmaster. The said notice was retained at the

post office, to be forwarded according to the act; and the said copy was returned to the objector, who produced the same in Court. The said notice would, in the ordinary course of post, have been delivered at the said place of abode, as described in the said list, on or before the 25th day of August last. It was objected on the part of the said S. Angle, that the production of such stamped copy was not the production of a duplicate notice, as required by 6 Vict. c. 18, s. 100. The barrister was of that opinion, and retained the name of the voter. The voter's qualification was not proved.

1844.

Toms  
and  
CUMING.

Objection.

Barrister's  
opinion and  
decision.

*Kinglake*, Serjt., for the appellant. The stat 6 & 7 Vict. c. 18, s. 100, directs, that in case of notice of objection, it shall be sufficient if the notice of objection shall be sent by post, directed to the person to whom it is to be sent, and "whenever any person shall be desirous of sending any such notice, he shall deliver the same duly directed open and in duplicate to the postmaster," and "the postmaster shall compare the said notice and duplicate, and on being satisfied that they are alike in their address and contents shall forward one of them to its address by the post, and shall return the other to the party bringing the same, duly stamped with the stamp of the said post office, and the production by the party who posted such notice of such stamped duplicate shall be evidence of the notice having been given to the person at the place mentioned in the duplicate."

Then sect. 17 enacts, that in the case of a borough voter, any person inserted on the list may object to any other person, if he gives notice according to the form No. 10 in schedule (B.) to that act, or to the like effect, to the town clerk, and every person so objecting shall

1844.

Toms  
and  
CUMING.

also give or cause to be left at the place of abode of the person objected to as stated in the said list a notice according to the form No. 11 in the said schedule (B.), and every such notice is to be signed by the person objecting.

Hitherto the practice was for the objector to prove two things, namely, the actual service of the notice on the party, and also that the notice was good. The object of the present enactment was to dispense with proof of service, but the party must still prove that the notice was given by him. The postmaster merely certifies that the duplicate is similar to the notice sent, and goes merely to the extent of proving their similarity in address and contents, but no further. It is on the party to show that he signed the notice deposited at the post office. The service in the present case is good, it having been proved that the notice sent was signed by the objector, and the certified duplicate proves its address and contents. Here it was requisite that the original and duplicate should both be signed under sect. 17, and that a copy would not be sufficient to show the service in this instance was good.

The duplicate was signed by a person in the presence of the objector, with his authority, and that is a sufficient signature under sect. 17. It was held in *Schneider v. Morris (a)*, that the statute of frauds was satisfied by printing the name of the vendor. [*Tindal*, C. J. That statute does not require the signature of the party to be charged. There is a distinction between clauses requiring that, and those which direct a document to be signed by the party or his agent. *Creswell*, J. The signature of a wife in the presence of her husband, and at his request, was held insufficient in the case of

*Hyde v. Johnson (a)*, which arose under 9 Geo. IV. c. 14, although it was assumed that the husband could not write.]

1844.

---

 Toms  
and  
CUMING.

*Cockburn* contra. Sect. 100 renders it necessary for the party objecting to produce his notice of objection open and its duplicate to the postmaster, who, on being satisfied that they are alike, "shall forward one of them to its address by the post, and shall return the other to the party bringing the same," stamped, and as no distinction is drawn here, the postmaster is at liberty to transmit either, and both therefore ought to comply with sect. 17. Both the parts ought to be what are commonly termed duplicate originals, there should indeed be no copy, but both should equally answer the same purpose. According to sect. 17, the duplicate which was produced in the present case was not signed in compliance with the provisions of that section. Under 2 Will. IV. c. 45, s. 47, no particular mode of signature was pointed out, and the numerous disputes consequently arose which it has been the object of the present act to prevent, and with that view it adds the words the omission of which had led to those disputes, "and every notice shall be signed by the person objecting." The language is not to be misunderstood; and if the present statute has any meaning at all, it is clear that the notice must be signed by the party himself. *Hyde v. Johnson* bears out this view. The words in the statute under consideration and the statute under which that case was decided are precisely similar, and it shows that when a statute makes no mention of an agent the signature of an agent is insufficient.

(a) 2 Bingham, N. C. 766.

1844.

TOMS  
and  
CUMING.

*Kinglake*, Serjt., in reply referred to *Kine v. Beaumont* (a).

TINDAL, C. J.—I am of opinion that the decision of the revising barrister was right, as the objector did not bring himself within sect. 100 of 6 Vict. c. 10. The first question is, do the words of the 17th section require the notice of objection to be signed by the objector himself. The concluding words of that section are, “and every notice of objection shall be signed by the party objecting.” The obvious and natural meaning is, that this shall be the personal signature of the party, and the provision is founded on reason. For we must remember that this statute enables the party to recover costs; and if the signature of an agent were allowed, the objector might procure any person to sign for him, and thus the voter might in some instances be deprived of his remedy. The case of *Hyde v. Johnson* will not allow us to put any other construction upon the present statute, and therefore on principal as well as authority I am bound to say that the notice of objection ought to be signed by the objector himself. The second question is, premising the original to be properly signed, whether the requisites prescribed by sect. 100 have been complied with as to the duplicate. That section points out the form of proceeding when the party sends a notice of objection through the post, and it directs that “he shall deliver the same duly directed, open and in duplicate, to the postmaster,” thus treating them both as originals, or as they are called in the course of the argument, duplicate originals: and says further, “that the postmaster shall compare the notice with the duplicate, and on being satisfied that they are alike in their address and

(a) 3 Brod. & Bing. 288.



contents shall forward one of them to its address by the post and return the other to the party bringing the same, duly stamped with the stamp of the said post office." Thus it is left to the option of the postmaster to send either, provided that he be satisfied that they correspond, and the stamped notice is good evidence of the service of the other. In the present case the notices not only did not correspond but differed materially; the one was a good notice, the other no notice at all; and therefore I think that the provisions of the act have not been complied with.

1844.

---

TOMS  
and  
CUMING.

MAULE, J.—I am of the same opinion, and the form contained in schedule (B.), No. 11, confirms that opinion. The signature there is described thus: "Signed A. B. of [*place of abode*], on the list of voters for the parish of [—]." That would require the name of the party to be written at the bottom of the notice, and when looked at with reference to the whole act satisfies my mind that A. B., the objector himself, should sign it. It is apparent from the form that the name of a person merely is not to be put, but that it shall be written by the person himself. Requiring the personal signature of the objector protects persons from much inconvenience, which might ensue if the signature of an agent were allowed. With respect to the duplicate required by the statute, the true meaning of the term duplicate is, that it shall be the same in all essential particulars, —in perfect strictness, one thing cannot be the same as another; it can only be said to be the same when it has precisely the like operation and effect. This was in fact not a duplicate, but merely an examined copy.

CRESSWELL, J.—It appears clear to my mind that the

1844.

Toms  
and  
CUMING.

effect of sect. 17, in requiring the notice of objection to be signed by the person objecting, is, that the party shall give the notice with his name written by himself, and not by any other person. The object of sect. 100 was to dispense with the necessity of proving the notice; it directs that the thing sent shall be identical with that produced by the objector, and looking at them, I am of opinion that the requirements of the act have not been complied with.

COLTMAN, J. concurred.

Decision affirmed.

ALLEN, *Appellant*, and HOUSE, *Respondent*.

A notice of objection to a vote is not vitiated by the introduction of useless words into it, if the words are not calculated to mislead.

THIS was an appeal from the decision of the barrister appointed to revise the list of voters for the borough of Taunton.

#### CASE.

Subject to the condition of registration, the right of voting for members for the borough of Taunton is only in the occupiers of property, by virtue of the statute 2 Will. 4, c. 45, and in certain persons within a part of the parish of St. Mary Magdalene, qualified, according to the usage of the borough, as potwallers. A potwaller, according to such usage, is considered to be one, whether he be a householder or lodger, who has the sole dominion over a room with a fireplace in it, and who furnishes and cooks his own diet at his own fireplace, or at some other place within the same house, at which fireplace he had a legal right so to do, and who also has actually cooked his diet at such fireplace. At the court

of revision the overseers of the parish of St. Mary Magdalene produced a list, which had been duly made out and published according to the Form No. 3 prescribed in Schedule (B.), annexed to the act of 6 Vict. c. 18, of persons entitled to vote in respect of property occupied by virtue of the 2 Will. IV. c. 45, and another list, which had been duly made out and published, of persons entitled to vote in respect of rights other than those conferred by the last-mentioned statute. In the latter list the names, places of abode, and qualifications of the voters, were inserted, and the nature of the qualification was described by the words, "a potwaller." In the list of occupiers the name of John Allen was entered as follows :

1844.

---

 ALLEN  
and  
HOUSE.

Name.	Place of Abode.	Nature of Qualification.	Property, where situate, &c.
Allen, John.	East Street.	Dwelling-house.	East Street.

His name was not on the potwallers' list, nor had he claimed, nor was he entitled to be inserted in that list, or in the list of voters for any other parish within the borough.

Thomas House, a person on the list of voters for the borough, appeared at the court of revision as an objector to the name of the appellant. It was proved that he had given the proper notice of objection to the overseers, who had duly published it, and that he had given, before the 25th day of August, a notice in the following form to the appellant :

"To Mr. John Allen, of East Street, Southside. I hereby give you notice that I object to your name being retained on the list of persons entitled to vote *as house-*

1844.

ALLEN  
and  
HOUSE.

*holders* in the election of members for the borough of Taunton. Dated this 23rd day of August, 1844.

(Signed) "Thomas House, of Silver Street, Taunton, on the list of voters for the parish of St. Mary Magdalene as a potwaller, and described therein as residing in Victoria Place."

Objection.

The words "as householders" were an interlineation. On the part of the appellant it was contended, that as there was no list of householders, as such, made out in the borough, the notice to him was vitiated by the introduction of the words, "as householders;" on the contrary, it was said for the objector, that these words were introduced to distinguish the list of occupiers, in which the name of the appellant appeared in respect of a dwelling-house, from the list of potwallers in which his name did not appear at all.

Barrister's  
decision.

The revising barrister held the notice sufficient, and required it to be proved that the appellant so objected to was entitled, on the last day of July then next preceding, to have his name inserted in the list of voters in respect of the qualification described in such list. The qualification was not proved, and the name of the appellant was expunged from the list.

*Kinglake*, Serjt., argued for the appellant.

*Cockburn*, for the respondent, was not called upon.

TINDAL, C.J.—The words "as householders," which are inserted in the notice, do not vitiate it. Had those words been at all calculated to mislead, it would have been otherwise, because the form would not be complied with. It seems to me, upon the principle, *utili per*

*inutili non vitiatur*, that these words "as householders" may be rejected.

The rest of the Court concurred.

1844.

ALLEN  
and  
HOUSE.

Decision affirmed, with Costs.

SCORE, *Appellant*, and HUGGETT, *Respondent*.

THIS was an appeal from the decision of the barrister appointed to revise the list of voters for the city of Westminster.

G. B. had the exclusive occupation of two rooms in a house, of which the passage, street door, back kitchen and yard were used in common by him and the other inmates of the house. Each occupier had a key of the street door, and the landlord did not reside on the premises. Held, that G. B.'s occupation was sufficient to confer on him the borough franchise.

#### CASE.

George Bedford occupied apartments at No. 7, Leicester Street, in the parish of St. James, in that city, consisting of two rooms on the second floor which communicated with each other, for which he paid £20 : 16s. a-year rent. Those rooms were occupied for four years by Bedford for the purpose of dwelling, and Bedford had the use of the back kitchen and yard in common with other parties. The house consisted of four stories: the front kitchen on the basement was let to another party; the ground floor, first floor and attics were each separately occupied by other parties. The access to the kitchen and the first and other floors was by the common street door of the house, a key of which was in the possession of each of the occupiers, who had each a key of the respective apartments in his own occupation, and the exclusive right of access thereto. The landlord, Mr. Kemp, did not reside in or occupy any part of the house. No question arose as to the residence or rating.

1844.

SCOTT  
and  
HUGGETT.  
Objection.  
The barrister's  
decision.

It was objected that the occupation of these two rooms was not sufficient to confer the elective franchise. The barrister decided otherwise, and retained the name on the list.

*Merewether* for the appellant argued that the occupation stated in this case was not a distinct and separate occupation of a house. There is no similarity between the present and the case of *Wright v. Town Clerk of Stockport* (a); here there is but one front door, common to all the inmates of the house. Had the landlord resided, there would clearly be no vote gained by the lodgers; the Court have so decided in *Pitts v. Smedley* (b).

MAULE, J.—This case is like that of two families occupying rooms on the opposite sides of a staircase, and using the staircase in common, each having a key to the outer door. The occupation is distinct, and the decision must be affirmed.

The rest of the Court concurred.

Decision affirmed, with costs.

(a) Part I. p. 21, *ante*.

(b) *Ante*, p. 107. .



1844.

WANSEY, *Appellant*, and PERKINS, *Respondent*.

THIS was a consolidated appeal from the decision of the barrister appointed to revise the list of voters for the city of London.

## CASE.

The claimant, James Hill, occupied the whole of the second floor in a house, No. 16, Budge Row, which floor consisted of three rooms, which were in the exclusive occupation of the said claimant, and were occupied by him as a dwelling-place and a printing office. The claimant occupied the rooms in question as tenant to one Knight, who occupied the shop and first floor in the said house, and who resided therein. The outer or street door of the house was kept closed, and the said Knight had a key thereto, as also had the said claimant.

There was no question raised in the case except as to the sufficiency of the qualification.

The revising barrister decided that the said James Hill was not entitled to have his name inserted in the said list of voters.

J. H. occupied one floor of a house, consisting of three rooms; the landlord occupied the shop and first floor, and each of them had a key of the outer door, which was kept closed. Held, that J. H. did not occupy as owner or tenant, and had no city or borough franchise within the stat. 2 W. 4, c. 45, s. 27.

The barrister's decision.

*M. D. Hill* and *Wordsworth* for the appellant argued that the qualification was sufficient. There can be no difference in principle whether the landlord of the house occupies the shop or lets it to some other person, so that the appellant's occupation of his *suite* of apartments is exclusive and complete. It was so in the present case. *Wright v. Town Clerk of Stockport* is expressly in point (a).

(a) *Id.*, p. 21, and 5 M. & G. 33; 13 L.J. (N. S.) C.P. 50.

1844.

---

WANSEY  
and  
PERKINS.

*Humphry and Grove* for the respondent. This is the case of a lodger only, and not of a tenant whose occupation is distinct and separate. The landlord resided and had controul over the whole house. They cited *The Mayor of London v. The Mayor of Lynn* (a), and *Alcock's Reg. Cases* (b).

TINDAL, C. J.—What doubt can there be in this case? It is true that there may be so complete an internal division of a house as to form separate and distinct tenements and to exclude the landlord from any dominion over them. In such cases distinct tenements are separate and distinct houses, but in the present the landlord resides in the house, letting off one floor. Upon these facts I am of opinion that Hill was a mere lodger and not the occupier of a house as owner or tenant within the stat. 2 Will. IV. c. 45, s. 27, the barrister's decision must be affirmed.

CRESWELL and ERLE, JJ., concurred.

Decision affirmed, with costs.

(a) 1 B. & P. 500.

(b) Pp. 2, 20, and 114.





1844.

---

*DYER, Appellant, and GOUGH, Respondent.*

**THIS** was an appeal from the decision of the barrister appointed to revise the list of voters for the borough of Westbury, on the 26th October, A. D. 1844.

A collector of window duties is, by sec. 2 of the stat. 22 G.3, c. 41, excepted from persons disfranchised by the 1st section.

**CASE.**

The name of John Dyer appeared upon the list of persons entitled to vote in the election of a member to serve in parliament for the borough of Westbury, in respect of property situate in the parish of Westbury. A notice of objection was proved to have been duly served upon him and the overseers of Westbury, against his right to have his name retained upon the list of voters for the said borough; and upon the said John Dyer appearing and being called upon to prove himself entitled to have his name retained upon the list of voters for the said borough, it was proved that the said John Dyer was, at the time of making out the said list of voters, and still is, a person employed in collecting the duties on windows, and that he was appointed such collector by a warrant and appointment, under the hands and seals of two of the commissioners for executing the several acts of parliament relating to the duties of assessed taxes.

It was admitted that the two commissioners making the said appointment were also commissioners of the land-tax; but this fact did not appear in any way recited or otherwise upon the said appointment.

The revising barrister was of opinion that the said John Dyer was not entitled, on the last day of July, 1844, to have had his name inserted in the list of voters for the said borough of Westbury, inasmuch as it ap-

The barrister's opinion.

1844.

---

 DYER  
and  
GOUGH.

peared to the said barrister that the said John Dyer was, at the time of making out the said list of voters, and still is, a person employed in collecting the duties on windows, within the meaning of the 22 Geo. 3, c. 41, s. 1, and expunged his name accordingly.

*Shee*, Serjt. (*Gurney* with him), for the appellant. By the statute 20 Geo. 2, c. 3, s. 6, the land-tax commissioners had the control over the raising, collecting, levying, &c. of the window duties; and that act continued in force till the passing of the stat. 22 Geo. 3, c. 41. The latter act, by sect. 1, no doubt disqualifies, as voters at elections of members of parliament, "the surveyors, collectors, comptrollers, inspectors, officers or other persons employed in collecting, managing or receiving the duties on windows." But by sect. 2 it is enacted, "that nothing in the act contained shall extend, or be construed to extend, to any person for or by reason of his being a commissioner of the land-tax, or for or by reason of his acting by or under the appointment of such commissioners of the land-tax, for the purpose of assessing, levying, collecting, receiving or managing the land-tax, or any other rates or duties already granted or imposed, or which shall hereafter be granted or imposed by authority of parliament." These "other rates and duties" allude to the window duties. [*Tindal*, C. J. To what persons then does sect. 1 apply?] Persons may be employed, who are not appointed by the land-tax commissioners. [*Erle*, J. That is so; by sect. 30 the commissioners of the treasury are to appoint surveyors and inspectors.] The collector's duties are imposed upon them *in invitum*, and they must perform them or incur a penalty of £20. There is no danger of undue influence, as the selection is, in fact, made by the persons who pay

the duties. It would answer no object to disqualify such officers.

1844.

---

DYER  
and  
GROVES.

*Cockburn* (*Kinglake* with him) for the respondent. The claimant is within the provisions of sect. 1 of the stat. 22 Geo. 3, c. 41, and not within sect. 2, which contains the exceptions. The first section is general, and includes all, as well those appointed by the crown as those officers not so appointed.

But the 43 Geo. 3, c. 99, transfers the appointment of collectors of window duties, &c. to the commissioners for the affairs of taxes. Thus the land-tax commissioners ceased to have any control over the window duties, and this claimant derived no appointment from the land-tax commissioners. The first section, consequently, applies to this case, and disqualifies him. [*Maule, J.* Are not the land-tax commissioners also the assessed taxed commissioners?] They are so created *ex officio*, if duly qualified. The 43 Geo. 3, c. 161, ss. 6 and 7, direct that the land-tax commissioners shall levy the assessed taxes.

He referred to *Collins v. Gwynne* (a), where the land-tax commissioners were recognized as distinct from the commissioners of assessed taxes.

TINDAL, C. J.—Had the first section of the statute 22 Geo. 3, c. 41, stood alone and uncontrolled by the second section of the same act, no doubt the present claimant, he being a person employed in collecting the duties on windows, would have been disqualified to vote. But the latter section creates an exception, within which, it appears to me, that this case falls. [His lordship read

(a) 7 Bing. 429

1844.

---

 DYER  
and  
GOUGH.

the second section (a)]. Had the legislature intended to except from the operation of sect. 1 the collectors of the land-tax only, this second section would have stopped at the words "land-tax;" but it adds—"or any other rates or duties already granted or imposed, &c." Looking then to the statutes which have been referred to in the arguments, we find that there are other duties to be collected under the control of the land-tax commissioners; and according to the case stated by the barrister, this claimant was appointed by two commissioners of land-tax, who were also commissioners for the assessed taxes. It seems to me, therefore, upon the clear construction of the second section, that this claimant is entitled to the franchise.

MAULE, J.—I quite agree that this case is excepted by sect. 2 of the stat. 22 Geo. 3, c. 41, from the operation of the first section. But then, it is argued, that though the claimant was not disfranchised by that act, he is so by the effect of the 43 Geo. 3, c. 99. That act related to the window duties, but made no provision for persons to put it in force. A subsequent act of the same year, c. 99, supplied the omission by casting that duty upon the land-tax commissioners; so that persons like this claimant could never be appointed but by those commissioners. It seems to me too that such persons are not in the service of the crown, and that there was no reason for disfranchising them on that account.

(a) 22 Geo. 3, c. 41, s. 2. Provided "that nothing in this act contained shall extend, or be construed to extend, to any person or persons for or by reason of his or their being a commissioner or commissioners of the land-tax, or for or by reason of his or their acting by or under the appointment of such commissioners of the land-tax, for the purpose of assessing, levying, collecting, receiving, or managing the land-tax, or any other rates or duties already granted or imposed, or which shall hereafter be granted or imposed by authority of parliament."

CRESSWELL, J.—I concur in the construction which has been given to the statute 22 Geo. 3, c. 41 ; and the subsequent statutes appear to me to have merely enlarged the duties and powers of the land-tax commissioners, without making any change in the franchise. All that 43 Geo. 3, c. 99, did was to enlarge the powers of the land-tax commissioners, without interfering with the rights of the persons appointed by them.

1844.

---

 DYER  
and  
GOUGH.

ERLE, J.—There can be no doubt that the claimant would have been entitled to vote as matters stood before the passing of the stat. 43 Geo. 3, c. 99. Then that statute created commissioners of assessed taxes ; and by a later statute of the same session of parliament, such commissioners must be commissioners of the land-tax. Thus the collectors of window duties are appointed mediately by the land-tax commissioners, and immediately by the commissioners for assessed taxes ; the management of the assessed taxes being merely added to the other functions of the commissioners of the land-tax. The reason of the thing is also in favour of this construction. It could not be intended to cast upon a man *in invitum* the performance of a duty, and then to disfranchise him for receiving it.

Decision reversed.



1844.

*JEFFREY, Appellant, and KITCHENER, Respondent.*

The right to vote for a borough as an inhabitant householder, which existed before the Reform Act (2 W. 4, c. 45), is only saved by sec. 33, while the original qualification is retained; and therefore where W. K. ceased to reside in the borough in which he had such a right, and went to reside elsewhere, but after an absence of fourteen weeks returned and became again an inhabitant householder of the borough, held, that he had ceased to be qualified and gained no new right as an inhabitant householder.

**THIS** was an appeal from the decision of the barrister appointed to revise the list of voters for the borough of Northampton.

**CASE.**

John Jeffrey objected to the name of William Kitchener, which appeared on the list of persons (not being freemen) entitled to vote for the said borough, in respect of any right other than those conferred by an act passed 2 Will. 4, entitled "an act to amend the representation of the people in England and Wales," for the parish of All Saints, as follows: "Kitchener William, Gregory Street, six months inhabitant householder, Gregory Street." Previously to the passing of the Reform Act, every person who had been an inhabitant householder within the borough of Northampton for six calendar months next before the day of election, and who had not received parochial relief or other alms for the space of twelve calendar months then last past, was entitled to vote in such election.

William Kitchener, at the time of the passing of the Reform Act, had a right to vote as an inhabitant householder of the said borough, and has ever since, with the exception hereinafter mentioned, been an inhabitant householder of the said borough. He was duly registered in the first registration under the provisions of the above mentioned act, and has never since been omitted for two successive years, unless in consequence of his having received parochial relief. In the month of October, 1832, he and his family ceased to reside at Northampton, and went to reside at Bedford, where he re-

mained for fourteen weeks, and then came back to Northampton, and immediately became an inhabitant householder, and has so remained up to the present time. He has, in every year since the passing of the Reform Act, been an inhabitant householder duly qualified according to the usages and customs of the borough of Northampton, on the last day of July in each year.

1844.

---

JEFFREY  
and  
KITCHENER.

It was objected that, by reason of having ceased to be an inhabitant householder for fourteen weeks, as above mentioned, he was no longer entitled to retain the reserved right of voting as an inhabitant householder.

Objection.

The revising barrister decided against the objection, being of opinion, that inasmuch as his absence from Northampton occurred during a period which was not necessary to qualify him as an inhabitant householder in any year, that is to say, between the months of July and February, he came within the saving clause of the 33d section of the Reform Act, and accordingly retained his name on the list of voters for the parish of All Saints.

Barrister's  
decision.

*Humphry* for the appellant. The vote of this claimant is gone by his own act of removal from the borough, and there is no reason why he should regain it by returning to reside, any more than it could be gained by a perfect stranger coming to settle in Northampton for the first time since the Reform Act. The very object of that statute was to render the borough franchise uniform, as is apparent from its whole tenor. Sec. 33, indeed, saves existing rights, but only so long as a person shall be qualified as an elector of a city or borough according to the customs and usages of such city or borough. The claimant in this instance had ceased to be an inhabitant householder; and had there been an election during the

1844.

---

JEFFREY  
and  
KITCHENER.

suspension of his inhabitancy, or even within six months after, he could not have voted. By this test it is manifest that his claim is a new one and not the existing right intended to be saved by the Reform Act (a).

*Waddington* for the respondent. The construction of the 33d section for which the appellant contends cannot be correct. It is difficult to see what distinction can be drawn in principle between a case of fourteen weeks' absence from the borough and one of twenty-four hours, and surely the latter would not forfeit the franchise. The right to vote was intended to be saved by sec. 33, so long as the voter's qualification according to the customs of the city or borough, continued. [*Maule, J.* That seems clearly to import a continuance of the right. How can it include the case where the right has been discontinued?] This person is not a mere stranger, but one who had a certain right when the Reform Act passed; and the obvious intent was to leave this right in just such a situation as it would have been if that act had never become law, except perhaps where the vote would not be good according to the old law on the last day of July, and then he might lose his franchise. This ground of disqualification does not operate in the present claim, nor was the name ever omitted from the register.

(a) Sec. 33. " Provided always, that every person now having a right to vote in the election for any city or borough, except those enumerated in the said Schedule (A.), in virtue of any other qualification than as a burgess or freeman, or as a freeman and liveryman, or, in the case of a city or town being a county of itself, as a freeholder or burgage tenant, as hereinbefore mentioned, shall retain such right of voting so long as he shall be qualified as an elector according to the usages and customs of such city or borough or any law now in force; and such person shall be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough, if duly registered according to the provisions hereinafter contained."



*Humphry* was not heard in reply.

1844.

JEFFREY  
and  
KITCHENER.

TINDAL, C.J.—The intention of the legislature, as it is to be collected from sec. 33 of the Reform Act, clearly was to establish an uniform right of voting in boroughs. But, to save existing rights, it was provided by that section that persons *shall retain* the right so long as they shall be qualified as electors according to the usages and customs of a city or borough or any law then in force. To be entitled to vote, therefore, it is necessary to *retain* the original qualification; but as that only subsists while the voter is an inhabitant householder, how can this claimant be said to have retained his right? He ceased for fourteen weeks to be a resident in the borough, and during that time had no qualification. It seems to me that he is now seeking to regain it, or rather to acquire an entirely new qualification. There seems no reason for saying that the legislature intended to give a preference to a person who voluntarily resigns his qualification, over a stranger who seeks to obtain a new franchise. The qualification must have existed at the time of the passing of the Reform Act and have still continued to exist, or it is not saved by the 33d section. The decision of the revising barrister must be reversed.

MAULE, J.—The legislature only meant to save such franchises as are not lost by the voter's own free will. The 33d section is clear enough, but if instead of "as long as," the words used had been "provided that," there might have been more ground for the present argument. The vote is to be retained "as long as" the party shall be qualified, and that clearly imports a continuing qualification.

1844.

JEFFREY  
and  
KITCHENER.

CRESSWELL, J.—I concur in the opinions which have been given. It is quite clear that the claimant could not have voted for the borough of Northampton while he was at Bedford, nor for six months after his return. He ceased therefore to *retain* his right of voting, and I think he could never acquire it again.

ERLE, J.—It appears to me that the legislature had in view a continuing qualification. This right being once discontinued the vote was lost and the appeal must be allowed to prevail.

Decision reversed.

---

DANIEL, *Appellant*, and COULSTING, *Respondent*.

The word "house," in 2 Will. 4, c. 45, s. 27, is not limited in meaning to a "dwelling-house."

A building calculated for a dwelling-house, and possessing the usual conveniences of one, formerly inhabited, but now used for various other purposes, is correctly described in the qualification in the list of voters as a "house."

THIS was a consolidated appeal from the decisions of the revising barrister for the city of Bristol, who stated the following case for the opinion of the Court :

CASE.

J. Daniel objected to the name of H. Fargus being retained upon the householders' list of such voters in the parish of St. Stephen. The voter's qualification, as stated upon the list, was "house." It appeared that H. Fargus rents a building, No. 4, Clare Street, which consists of apartments, once used as kitchens, shop, sitting-rooms, and bed-rooms, and which possesses the usual conveniences to fit it for a dwelling-house. It is in fact every way calculated for a dwelling-house, and has been used as such, and the houses on each side precisely similar to it in appearance are occupied as dwelling-houses, but H. Fargus occupies the greater portion of the building

himself, partly for warehousing goods and partly for a sale-room, and some of the upstairs apartments not so occupied he lets off to be used as workshops. No one resides upon the premises. They are rated to the poor as "dwelling-house and shop," but no assessed taxes are paid for them.

1844.

---

 DANIEL  
and  
COULSTING.

The objection was, that the building being now used solely for the purposes stated, the qualification on the list ought to have been "warehouse and shops." Objection.

It was contended, on the other side, that the qualification was properly described, but for the purpose of "more clearly and accurately defining the same," the barrister was requested to add to the word "house," the words, "now used as warehouse and shop."

The barrister decided that the premises, No. 4, Clare Street, being to all intents and purposes a "house," though not now used as a dwelling-house, the word "house" was a sufficient description of the qualification; and he further decided, that if it should be necessary to make the proposed alteration he had the power to do so, and he added to the qualification the words which had been suggested. Barrister's decision.

*Kinglake*, Serjt., for appellant. A party claiming to vote in respect of his occupation ought to define with accuracy the description of premises which confer the franchise; precise words are given in the 27th sect. of 2 Will. 4, c: 45, and they ought to be adopted to denote the particular case. House means "dwelling-house," in the absence of express words. "Warehouse" would be the most appropriate term; an accurate description is necessary for the purpose of giving information to a party wishing to object. In *Allman v. St. Briavells(a)*, a

(a) 8 B. & C. 461, vide the judgment of Bayley, J.

1844.

---

DANIEL  
and  
COULSTING.

building intended for and constructed as a dwelling-house, but which had not been completed or inhabited, and in which the owner had deposited straw and agricultural implements, was held not to be a house, outhouse or barn, within the meaning of 9 Geo. 1, c. 22, s. 7, so as to entitle the owner to maintain an action against the hundred for an injury sustained by him in consequence of a malicious setting fire to the same.

TINDAL, C. J. (without calling on respondents.)—The real question is, whether the building referred to in the case was a *house*, within the meaning of 2 Will. 4, c. 45, s. 27, which gives the right of voting under certain restrictions to “any male person who shall occupy within any city or borough, as owner or tenant, any house, warehouse, counting-house, or other building.” Although it is necessary that the building should be a house, it is by no means necessary that the party should dwell in it. The description here is correct; it is described as No. 4, Clare Street; it was adapted for a dwelling-house, and divided into apartments; it possessed the usual conveniences of a dwelling-house, and the description of it, as given in the case, would apply to none of the other words used in the 27th section. The description “warehouse” would have been wrong, as only one room was used for the purpose of a warehouse, and there is nothing to show that it was either a counting-house or shop. Occupation of the house is all that is requisite, and a house let for the purposes of a debating society would be a house within the meaning of the act, and would create a franchise. Greater particularity would create difficulties in addition to those imposed by the statute, which we have no right to do.

CRESSWELL, J.—This appears to me quite a frivolous objection; I can discern no reason for necessarily interpreting “house” as dwelling-house. The case which was cited in argument does not apply to the present question; there it was merely held that 9 Geo. 1, c. 22, s. 7, did not alter the nature of the crime of arson, or create a new offence, and consequently that a building was not a house within the meaning of the act, unless it was a building in respect of which burglary might have been committed.

1844.

---

DANIEL  
and  
COULSTING.

ERLE, J.—The qualification ought to be expressed in language intelligible to every one acquainted with the English language. This has been done, for no one inspecting the premises in question could hesitate in calling them a “house,” in the common acceptation of the term, and I am therefore of opinion that the decision was right.

Decision affirmed, with costs.



1844.

*DEWHURST, Appellant, and FIELDER, Respondent.*

Several  
 "houses, ware-  
 houses, count-  
 ing-houses,  
 shops or other  
 buildings," not  
 separately of the  
 value of 20*l.*,  
 but in the ag-  
 gregate of a  
 greater value,  
 do not entitle  
 joint occupiers  
 to a borough  
 vote, under  
 sect. 27 of the  
 Reform Act.

**THIS** was an appeal from the decision of the barrister appointed to revise the list of voters for the borough of Bradford.

**CASE.**

Joseph Fielder's occupation was described in the list of voters as "joiner's shop, warehouse and land in Thunder and Back Lane," in the said borough.

Joseph Fielder has, together with his uncle, jointly occupied, as owners, sufficiently long to confer a vote (as far as regards the mere question of time of occupation) a joiner's shop in Back Lane, worth, by itself, under 20*l.* a-year, and a warehouse, worth 11*l.* a-year, besides two yards in Thunder Lane, occupied for the deposit of stones and flags, the two yards being worth together about £5 a year; these several premises are the joint property of himself and his uncle, and occupied jointly in manner above stated. The said J. Fielder and his uncle are the joint owners of considerable property in the borough, and they occupy the whole of the said premises as workshops and store places for the purpose of building on and repairing their properties. The joiner's shop, the yards and the warehouse, are worth together above 20*l.* a year; but the joiner's shop alone is not worth 20*l.* a year, and the warehouse and yards alone are not together worth, independently of the joiner's shop, 20*l.* The warehouse and yards are distant from the joiner's shop, and there are many buildings and other descriptions of property lying between the joiner's shop in Back Lane and the warehouse and yards in Thunder Lane, which premises, so lying between

the two, are the property and in the occupation of other and different persons. If the premises in Back Lane and those in Thunder Lane can be united, so as to confer a vote on the said Joseph Fielder, they are of more than sufficient value for that purpose; but if they cannot be united for that purpose, then the joiner's shop is of insufficient value to confer a vote on the said Joseph Fielder, and the warehouse and yards in Thunder Lane are also of insufficient value to confer a vote on the said Joseph Fielder.

1844.

---

 DEWHURST  
and  
FIELDER.

The revising barrister decided that the said Joseph Fielder occupied a joiner's shop, warehouse and land, of sufficient value to entitle his name to be retained on the list of voters for the said borough, within the meaning of the 2 Will. 4, c. 45, s. 27. The barrister's decision.

*Cockburn* for the appellant. The question here is, whether sect. 27 of 2 & 3 Will. 4, c. 45, is satisfied by the occupation of distinct buildings amounting in the whole to the yearly value of 10*l.*; the words of the section are, "every person who shall occupy in a borough any house, warehouse, counting-house, shop or other building, being either separately or jointly with any land within such city, borough, or place occupied therewith by him as owner, or occupied therewith by him as tenant under the same landlord, of the clear yearly value of not less than £10," shall be entitled to vote. *Webb v. Overseers of Aston* (a), and *Sweetman's case* (b), established the point that several tenements under 10*l.* cannot be joined together so as to make up the borough franchise, and that land was the only species of property which could be taken into account, in order to complete the necessary amount. The intention of the legislature

(a) Fig. &amp; Rod. Reg. Ca. (5.)

(b) *Alcock*, Reg. Ca. 27.

1844.

---

 DRWHURST  
and  
FIELDER.

would be defeated if this practice were recognized, as a person renting a single house of the value of 10*l.* is likely to be more respectable than one holding several small tenements.

*Kinglake*, Serjt. In *Rogers on Elections*, p. 178, it is laid down that several tenements, collectively of the value of 10*l.* each, confer a qualification under sect. 27 of the statute referred to. *Webb v. Aston* was not determined on that point. It is unimportant so long as a party is possessed of property worth 10*l.* per annum whether it consists of one or of several buildings. He referred to *R. v. Macclesfield* (a), *R. v. Tadcaster* (b), and *R. v. Wootton* (c).

*Cockburn*, in reply, was stopped by the Court.

TINDAL, C.J.—It appears to me that the decision of the revising barrister is wrong. Sect. 27 enacts, that every person who shall occupy, within a city or borough, any house, warehouse, counting-house, shop or other building, being either separately or jointly with any land within such city or borough, occupied therewith by him as owner, or as tenant under the same landlord, of the clear yearly value of not less than 10*l.*, shall be entitled to the franchise. Now the first observation which suggests itself is, that all these words are in the singular number, and it would have been just as easy to have used the plural number, had the legislature ever intended that more than one of the buildings enumerated should have made up the franchise; but the section further states that, when the house, &c., shall not amount

(a) 2 B. & Ad. 870.      (b) 4 B. & Ald. 703.      (c) 1 A. & E. 232.



to 10*l.* yearly, that sum may be made up by the occupation of land in conjunction with it. This exception in favour of land goes far to show that no other description of property was to be taken into account in conferring the qualification, and the maxim, "*expressio unius est exclusio alterius*," applies to the present case. On looking at form No. 3, in which the list is to be made out, it appears adapted to a single and definite subject-matter, rather than to any thing which is to be composed of several matters. It may be, moreover, that it was in the contemplation of the legislature to confer the right of voting only upon a man who occupied a house worth 10*l.* per annum, considering him in a proper position in life to exercise this franchise.

1844.

---

DEWHURST  
and  
FIELDER.

MAULE, J.—I quite concur in the observations of my Lord, and without entering upon the discussion of cases which have been decided on statutes relating to the relief of the poor, and which, to say the least, are most unsatisfactory, it is enough to say that those authorities are not in point with regard to the present question.

CRESSWELL, J.—The case appears to me so clear as not to admit of argument.

ERLE, J.—On looking to the words of the statute, which are used solely in the singular number, I cannot doubt but that the qualification must be derived from *one* house, warehouse, &c., and not from several of such buildings taken conjointly. Every species of *land* indeed would not satisfy the statute, for a freehold building of the value of 9*l.* could not be joined to leasehold land of the same value. It was never therefore intended that every person who held property of the yearly value of

1844.  
DEWHURST  
and  
FIELDER.

10l. should have a right to vote ; that right was limited to particular classes, and I do not think the claimant was so privileged.

Decision reversed.

WANSEY, *Appellant*, and PERKINS, *Respondent*.

LOCKEY'S VOTE.

An occupier's claim to be rated under sec. 30 of 2 W. 4, c. 45, only applies to the rate for the time being, and the claim must be renewed upon every fresh omission.

THIS was a consolidated appeal from the decision of the revising barrister for the city of London, on the following

CASE.

The name of the said R. Lockey was inserted in the list of voters for the parish of St. Michael, Wood Street, in respect of the occupation of a "warehouse, 8, Wood Street."

The only question raised in the case was, as to the effect of a claim to be rated to the poor rate, made by the said R. Lockey, under the following circumstances :

On the 26th day of July, 1837, the said R. Lockey was the occupier of the said warehouse as tenant, and on or about that day the said R. Lockey duly claimed to be rated to the relief of the poor, in respect of the said premises so occupied by him, there being then a rate for the time being in the parish, but there not being any rate due in respect of such premises. The overseers neglected to put the name of the said R. Lockey on the rate for the time being. Other rates for the relief of the poor were subsequently made in the said parish between the said 26th day of July, 1837, and the 31st day of July, 1843; and between the 31st day of July, 1843,

and the 31st day of July, 1844, two rates, for the relief of the poor, were made in the said parish; that is to say, one on the 11th day of October, 1843, and one on the 11th day of February, 1844. The said R. Lockey occupied the said premises from the said 26th day of July, 1837, to the said 31st day of July, 1844, inclusive, but he was not rated, in fact, in respect of such premises, to any rate for the relief of the poor, made after the said 26th day of July, 1837, and he did not make any claim to be rated after the said 26th day of July, 1837.

1844.

---

 WAREY  
and  
PERKINS.

The objection was, that the claim to be rated was limited to the rate for the time being, and that the said R. Lockey was not duly rated. Objection.

The revising barrister decided, that the operation of the said claim was limited to the rate for the time being when the said claim was so made as aforesaid, and that the said R. Lockey could not be deemed to be rated in respect of the said premises during the time of his occupation thereof, required by sec. 27 of the said act. Barrister's  
decision.

*M. D. Hill* and *Wordsworth* for the appellant relied on sec. 30 of the stat. 2 W. 4, c. 45, which enacts, "that in every city or borough which shall return a member or members to serve in any future parliament, and in every place sharing in the election for such city or borough, it shall be lawful for any person occupying any house, warehouse, counting-house, shop or other building, either separately or jointly with any land occupied therewith by him as owner, or occupied therewith by him as tenant under the same landlord, in any parish or township in which there shall be a rate for the relief of the poor, to claim to be rated to the relief of the poor in respect of such premises (&c.), and upon such occupier so claiming and actually paying or tendering the

1844.

---

WANSEY  
and  
PERKINS.

full amount of the rate or rates, if any, then due in respect of such premises, the overseers of the parish or township in which such premises are situate are hereby required to put the name of such occupier upon the rate for the time being: and in case such overseers shall neglect or refuse so to do, such occupier shall nevertheless for the purposes of this act be deemed *to have been rated* to the relief of the poor in respect of such premises from the period at which the rate shall have been made in respect of which he shall have so claimed to be rated as aforesaid." It is unnecessary to repeat the claim, as subsequent omissions as well as prior ones are provided for. [*Cresswell*, J. The statute only uses the words, "such occupier shall be deemed *to have been rated*."] It cannot mean that the claim to be rated is to be repeated by the same person upon every fresh rate. The overseers are not expected to be guilty of so much negligence, but if they are, it is cured by one claim. [*Tindal*, C. J. He must repeat his claim if he is omitted; he must be continually claiming.] Then, if twelve rates are made in the year, he would have to make twelve claims. He must pay all the rates, doubtless. [*Tindal*, C. J. He must both claim and pay.]

The respondent's counsel were not called upon.

TINDAL, C. J.—New overseers may come into office who know nothing of a former omission or claim. The franchise must be kept alive by continual claims, while the omission of his name on the rate continues. The point is clear of doubt.

Decision affirmed, with costs.

---

1844.

WANSEY, *Appellant*, and PERKINS, *Respondent*.

## QUIGLEY'S VOTE.

THIS was a consolidated appeal from the decision of the revising barrister for the city of London on the following

## CASH.

R. T. Perkins, on the list of freemen of London and liverymen of the company of Patten Makers, entitled to vote in the election of members for the city of London, objected to the name of Patrick Quigley being retained in the list of persons entitled so to vote. The name of the said Patrick Quigley was in the list of persons entitled to vote, published by the overseers of the parish of St. Anne and St. Agnes, in the said city.

The notice of objection by the said R. T. Perkins, which had been duly served upon the said overseers, was as follows :

"To the overseers of the parish of St. Anne and St. Agnes, in the city of London. I hereby give notice, that I object to the name of Patrick Quigley being retained in the list of persons entitled to vote in the election of members for the city of London. Dated this 16th day of August, 1844.

(Signed) "Robert Thomas Perkins, No. 11, Meredith Street, Clerkenwell, on the list of voters for the Company of Patten Makers."

And the notice of objection, which was duly served upon the said P. Quigley, was as follows :

"To Mr. Patrick Quigley, 4, Dove Court. I hereby give you notice, that I object to your name being retained in the list of persons entitled to vote in the elec-

In Schedule (B.) to stat. 6 Vict. c. 18, a form of objection to a voter is given (No. 10), which is required to be sent to the overseers, &c., and also a form (No. 11), which is to be sent to the parties objected to. To the former is appended, "Note. If more than one list of voters, the notice of objection should specify the list to which the objection refers," &c. Held, that the note to form No. 10 does not apply to form No. 11, and that a notice of objection need not specify to which parish-list the objection relates.

1844.

---

 WANNEY  
and  
PERKINS.

tion of members for the city of London. Dated this 16th day of August, 1844.

(Signed) "Robert Thomas Perkins, No. 11, Meredith Street, Clerkenwell, on the list of voters for the Company of Patten Makers."

Objection.

It was objected on behalf of the said Patrick Quigley, that the said notices of objection were insufficient, and that he was not called upon to prove that he was entitled to have his name inserted in the said list; and it was contended, that, as in the city of London there were lists of freemen and liverymen as well as lists of parties entitled to vote in respect of a property qualification, and also that there were as many lists of such last-mentioned parties made out by the overseers as there were parishes in the said city, the notice of objection served upon the overseers should have specified the list to which the objection referred, pursuant to the note at the foot of the form No. 10 in the Schedule (B.), annexed to the statute 6 Vict. c. 18 (a); and that the notice served upon the said P. Quigley should in like manner have specified such list, and that although the said note was not in fact appended to the form No. 11, in the said Schedule (B.), it must be considered as applicable thereto.

On the other hand, it was contended on behalf of the said R. T. Perkins that the said note applied only to cities or boroughs where the overseers had to make out more than one list or set of lists of voters; as, for example, where they had to make out lists of householders and of all other persons (except freemen) entitled to vote by virtue of any other right (under sec. 13

(a) The note to No. 10. is "Note—If more than one list of voters, the notice of objection should specify the list to which the objection refers; and if the list contains two or more persons of the same name, the notice should distinguish the person intended to be objected to."

of the said statute); and as the lists of freemen and liverymen were made out by the clerks of the respective companies (under sec. 20 of the same act), the overseers having nothing to do therewith, and as the notice was addressed to the overseers of the particular parish in which the property was situated, that they, the said overseers, could not have been misled by the notice in question. And further, that there was no necessity to consider the said note as applicable to the form No. 11 in the said Schedule (B.), which had been strictly followed.

1844.

---

WANSEY  
and  
PARKINS.

The revising barrister decided that each of the said notices of objection was sufficient, being of opinion also that if he rejected the said notice of objection, and did not require the said P. Quigley to prove that he was entitled to have his name inserted in the said list of voters, and there had been an appeal from such decision, and the Court of Common Pleas had reversed such decision, it would have been too late to require the said P. Quigley to prove that he was so entitled, and if the Court had ordered the name of the said P. Quigley to be expunged from the said list, he would have had no opportunity to prove that he was so entitled.

The barrister's  
decision.

The revising barrister, therefore, required it to be proved that the said P. Quigley was entitled to have his name inserted in the said list of voters, and the same not having been proved to the satisfaction of the revising barrister, he expunged the name of the said P. Quigley from the list. If the Court of Common Pleas should be of opinion that either of the said notices of objection was insufficient, the name of the said P. Quigley was to be restored to the said list.

*M. D. Hill* and *Wordsworth* for the appellant. The

1844.

---

WANSEY  
and  
PERRINS.

particular parish alluded to by the objection should be made known to the voter. Every parish has a separate list, and there may be extra-parochial lists also. A voter may have a qualification in each, and his attention should be drawn to actual objections relied on. According to the note to form No. 10 in Schedule (B.) of 6 Vict. c. 18, "If more than one list of voters, the notice of objection should specify the list to which the objection refers;" (&c.) And though the form of notice of objection to be given to parties objected to (No. 11 in Schedule (B.)) has not the same note appended to it, yet the Court may construe the act so as to carry out its intention. And there is the same necessity for it in the case of the notice to the party as to the overseers. [*Tindal*, C.J. When a person is objected to, he must not be inactive. The notice published by the overseers will show to what parish the objection is directed.] A personal notice is now required, and it is only reasonable that the name of the parish should be given. [*Tindal*, C.J. Is it required by the act? that is the question.] The notice to the overseers is certainly bad. The note to form No. 10 is not observed. [*Erle*, J. Overseers have nothing to do with any parish but their own.] Then the note to the form No. 10 is nugatory. Besides, there are places extra-parochial.

*Humphry and Grove* for the respondent. The meaning of the vote to form No. 10 is fully explained by reference to sec. 13 of the statute, which enacts "that the overseers of every such parish or township shall make out an alphabetical list of, &c. and another alphabetical list, (&c.) of all other persons (except freemen) who may be entitled to vote in the election of a city or borough by virtue of any other right whatsoever." It



was clearly not intended that the note to form No. 10 should apply to No. 11, or it would have been so expressed. So to apply them would be to alter the very language of the statute.

1844.

---

 WANSEY  
and  
PERKINS.

It is not stated as a fact that there was any extra-parochial list, or two lists in the parish, or that the voter had a qualification in more than one parish. *Gadsby* and *Warburton* is in point (a). The Court there said it is not to be presumed that there are two parishes of the same name.

*M. D. Hill* in reply cited *Tudball v. Town Clerk of Bristol* (b).

TINDAL, C. J.—Upon referring to the stat. 6 Vict. c. 18, and Schedule (B.) thereto, it appears to me that the notice of objection served on this voter is sufficient. It is argued that the notice in question, by omitting to specify the parish to which it applies, may impose difficulties on the voter, if he has several qualifications lying in more than one parish. That difficulty must, in some degree, be admitted, and Mr. *Hill's* suggested alteration would make the notice more satisfactory, but as the law stands, I think the notice sufficient.

The notice to the overseer is out of the question ; the objection of which notice is given to him can only refer to the parish in which such objection is made. Then, as the overseers are required to affix to the church doors a list of the objections, a person objected to may, by sending or going himself to the church doors of the parishes in which he has property, ascertain to what property the objection applies.

No notice was required to be given to the voter at all

(a) *Ante*, p. 77.

(b) *Ante*, p. 14.

1844.

---

WANSLEY  
and  
PERKINS.

in cities and boroughs before the stat. 6 Vict. c. 18, but only to the overseers; and the real question is, does the present notice comply with sec. 17 of the statute? That section placed voters in cities and boroughs on the same footing as county voters with respect to the privilege of having a notice of objection sent to them, and a form of notice is given (No. 11) in Schedule (B.). The notice given in the present case strictly complies with that form. With regard to the argument, that a note to another form (No. 10) in the same schedule ought to be construed to apply to No. 11; the answer is, that to adopt such a suggestion would be not merely to construe the law but to make it, a course which we have no right to pursue. The notice was strictly in compliance with the form given in the schedule to the act, and therefore the barrister's decision must be affirmed.

CRESSWELL, J.—We have no right to consider what would be most beneficial to the parties objected to by the notice, or to do more than construe the statute according to the ordinary meaning of the words used, taking care that in so doing, it does not lead into any manifest absurdity. If the party has more claims than one, and he is in doubt to which the objection points, he can go to the church doors, or he may go before the revising barrister, and by establishing one claim will be relieved from further difficulty. The case of *Tudball v. Town Clerk of Bristol* appears not at all in point; that was a case of misdescription of the objector.

ERLE, J.—We are asked to make an alteration in the terms of the act of parliament, to remedy some supposed inconvenience. But if the party objected to is in doubt about the property to which the notice points, he can

inform himself by going to the church doors and inspecting the list there affixed. As regards applying the note appended to form No. 10 to form No. 11, that statute shows that such was not the intention of the legislature, as may be seen by reference to Schedule (C.), Nos. 4 and 5, where the notices to the party and the officers stand reversed in order, and the note is appended to the notice which is to be given to the latter.

1844.

---

WANSEY  
and  
PARKING.

Decision affirmed.

---

HINTON, *Appellant*, and HINTON, *Respondent*.

THIS was a consolidated appeal from the decision of the barrister appointed to revise the list of voters for the borough of Wenlock.

CASE.

A person whose name was proved to be William *Nicholas* objected to the vote of Henry Cooper. The notice of objection was signed by himself, with the words, "William *Nicholas*, of Colebrook Dale, in the parish of Madely, on the list of voters for the parish of Madely."

Madely is a suffragan parish of the borough of Wenlock.

The notice was in all respects regular, and in conformity with the form prescribed by 6 Vict. c. 18.

The name referred to in the Madely list was William *Nickless*. The name of William *Nicholas*, sent by the objector, was on the list of claimants on the church-door. It was clearly proved that this was intended for the objector's name by the overseer, and that William *Nicholas*, the objector, was the identical person whose

One Nicholas, who was denominated by mistake on the list of voters as "Nickless," duly served a notice of objection, signed by his right name of Nicholas; the barrister decided that the objector was so denominated in the notice of objection and list, "as to be commonly understood." Held, that it was a question of fact, for his decision.

1844.	name was written William <i>Nickless</i> in the list of Madely voters. It was also proved that the mistake had been committed in the lists of the preceding year, and that in 1843 William Nicholas had applied to the revising barrister to correct the mistake. The revising barrister had corrected the mistake, and inserted the name, properly spelt, in the list, when he revised the said list. The overseer of Madely swore that the repetition of the error was owing exclusively to his own negligence. The
HINTON and HINTON.	Objection. the objection to the validity of the notice was whether the objector was entitled to object at all, or whether, if so, his signature was sufficient.
Revising barrister's decision.	The barrister held the notice valid, and, the case of the objector being established, expunged the name of Henry Cooper from the list of voters, which, if the Court of Common Pleas were of a different opinion, was to be restored.

*Keating*, for the appellant, referred to the case of *Tudball v. Town Clerk of Bristol (a)*. In that case this Court held that the objector must state his qualification with great accuracy, or he would mislead the voter and throw difficulties in his way. That decision is in point here, for, on reference to the list of voters, there would be found no person of the name of "*Nicholas*." The voter would be thrown off his guard by that circumstance, and not prepare himself to defend his vote, deeming it quite sufficient to have a good ground of objection to the notice which had not been given by a person on the list of voters. The stat. of 6 Vict. c. 18, requires the list of voters to be alphabetically arranged, for more easy reference. The argument of *idem sonans* does not apply in this case, the reference being from one *writing* to another.

(a) *Ante*, p. 114.

*Gray* for the respondent. The revising barrister has disposed of the whole question, which was purely one of fact, not of law. He referred to sect. 101 (a) of the stat. 6 Vict. c. 18. It is only required that the party shall be so described or denominated as to be commonly understood. The barrister has held that the notice was good, and his decision cannot be said to be necessarily inconsistent with the facts proved.

1844.

---


HINTON  
and  
HINTON.

*Keating* replied.

TINDAL, C. J.—This question is one of fact, and not of law, which is a conclusive answer to the appeal. Had the objection been on the ground of variance from the form given by the statute, that might have raised a question of law. The act, in the interpretation clause, states that no misnomer shall prevent the operation of the act, &c., provided the person shall be so denominated in the list or notice "*as to be commonly understood.*" The defect here is in the name, and the barrister has decided, as a matter of fact, that the person is denominated in such a manner as to be commonly understood. There seems therefore to be no ground for the appeal.

Decision affirmed.

(a) "No misnomer or inaccurate description of any person, place, or thing, named or described in any schedule to this act annexed, or in any list or register of voters, or in any notice required by this act, shall in any wise prevent or abridge the operation of this act with respect to such person, place, or thing, provided that such person, place, or thing, shall be so denominated in such schedule, list, register, or notice, *as to be commonly understood.*"



1844.

*BAXTER, Appellant, and NEWMAN, Respondent.*

Several persons purchased land whereon a fulling-mill was afterwards erected and supplied with machinery by funds also subscribed by them. The land was conveyed to trustees absolutely, upon trusts declared in a deed of partnership entered into by the trustees, the claimants, and all the other partners.

By this deed it was declared that the said joint concern, trade, &c., should be carried on in the names of the trustees, and that the lands, mill, &c. &c. "shall be deemed as in the nature of personal estate, and not real estate," and shall be held in trust as partnership stock in trade. The mill was worked by servants employed by a committee appointed by a general meeting of shareholders. The shareholders fulled their own cloth at the mill; and at the annual settlement of the profits of the mill the shareholders were each debited for the amount of cloth fulled by them respectively. Strangers were allowed to full cloth at a charge, which was paid to the managing committee, and credited by them to the profits of the joint concern.

*Held*, that the interest of the shareholders was an equitable estate in realty, and conferred a vote on them.

The trustees had, under the power of their partnership deed, borrowed sums of money for the purposes of the mill, for which they had given bonds and notes in their own names.

*Held*, that the money so borrowed on notes and bonds had not the effect of a mortgage of the shares.

THIS was a consolidated appeal by Baxter, Bateman, Brooksbank, and thirty-four other persons, against the decision of the barrister appointed to revise the list of voters for the West Riding of Yorkshire in 1844. The following case for the opinion of the Court, pursuant to the statute, was stated.

## CASE.

The claimants joined many other persons in forming a partnership to build and carry on their respective trades in a mill which was built in manner hereinafter mentioned. Money was subscribed by all the partners, part of which was appropriated to buy freehold lands which were conveyed unto and to the use of certain trustees, their heirs and assigns absolutely. Other part of the money was appropriated to build the said mill upon such lands, and the remainder of the said money was appropriated to buy machinery, &c. for the purpose of the mill. By a general partnership deed, executed by the said trustees, the above claimants, and all the other partners, the trusts of the freehold lands so conveyed to the said trustees as aforesaid, and of the said mill then to be built, the machinery and everything belonging or appertaining to the said lands, mill and premises, were de-

The shareholders fulled their own cloth at the mill; and at the annual settlement of the profits of the mill the shareholders were each debited for the amount of cloth fulled by them respectively. Strangers were allowed to full cloth at a charge, which was paid to the managing committee, and credited by them to the profits of the joint concern.

clared to be that the said joint concern, trade and business should at all times during the continuance of the copartnership be conducted and carried on in the names of the trustees, and the survivor and survivors of them ; “ and that all and singular the estates, property, goods, chattels and effects belonging, or which shall belong to, or which have been and shall from time to time be purchased by or for or on account of the said partnership, or for carrying on the said joint concern, trade or business, shall be conveyed, transferred, delivered and assigned to and vested in such trustees or trustee for the time being, who shall at all times stand seised or possessed thereof, and interested therein, upon trust for the benefit of themselves and their partners in the said joint concern, as part of their partnership joint stock in trade.” And that all contracts, dealings, sales, purchases, payments, receipts, bills, notes, drafts, orders, securities, actions, suits, proceedings, matters and things whatsoever, for or on account or in respect or relating to the said joint trade, should be and be carried on in the names of such trustees or trustee for the time being. There were also other provisions in the said deed in the words following :

“ That at all times, and, from time to time during this copartnership, it shall and may be lawful to and for the trustees for the time being, at their request and by the direction of three-fourth parts in value of the partners who shall be present either in person or by proxy at any general meeting to be held after ten days’ previous notice thereof in writing, to be affixed on the principal door of the said mill by the committee for the time being, to take up, borrow and raise upon the credit of the joint trade, or by or upon mortgage or other security of all or any part or parts of the stock, property, estate

1844.

---

BAXTER  
and  
NEWMAN.

1844.

---

BAXTER  
and  
NEWMAN.

or effects of and belonging to the said copartnership, any such sum or sums of money, to be employed in the said joint trade, as such three-fourth parts of the said partners at such last above mentioned or any other general meeting to be held in like manner shall order or direct; and that each and every of the said parties hereto, his, her and their executors, administrators and assigns, shall and will pay his, her and their share of every sum and sums of money which shall be so taken up, borrowed and raised, in proportion to the number of shares he, she or they shall hold in the said joint trade. And it is hereby agreed and declared that the said lands contracted to be purchased as aforesaid, and the mill and other buildings which have been and shall be erected and built thereon, and all other lands, tenements and hereditaments, which shall or may be purchased by, with or out of the copartnership, joint stock, monies and effects, and be received in exchange, *shall be deemed and considered as or in the nature of personal estate, and not real estate*, and shall be held in trust for the said several parties hereto respectively, and their respective executors, administrators and assigns, as part of their partnership stock in trade, in the same parts, shares and proportions, as they are and from time to time shall be interested in or entitled to the partnership stock in trade, monies and effects. And it is hereby provided, declared and agreed, that the person or persons who shall advance or pay any money to the trustees or trustee for the time being of the said copartnership or company, their or his heirs, executors, administrators or assigns, or to their or his agent or agents, or any other person or persons, under their or his direction, upon any mortgage or mortgages, or other security of or upon all or any part or parts of the said copartnership, joint stock, property, estate and



effects, or upon any exchange of the same, or any part thereof or otherwise, pursuant to these presents, shall not be obliged or required to see to the application of such money, or be answerable or accountable for the misapplication or nonapplication of the same, or any part thereof, nor to see or inquire whether any order, authority or direction, for any such mortgage or security or exchange be made or given by the said partners, any or either of them, or whether any such mortgage or security or exchange be made pursuant or in conformity to the powers, authorities and directions herein contained, and that all receipts which shall be given by the said trustees or trustee for the time being, any or either of them, or his, their or any or either of their heirs, executors, administrators or assigns, agent or agents, or by any other person or persons to whom the same money shall be paid, under their or his direction, shall be good and sufficient discharges for the sum or sums of money which therein or thereby shall be expressed or acknowledged to be or to have been received. And that every mortgage and security and conveyance by way of exchange, which shall be made, executed or given by the said trustees or trustee for the time being, or any or either of them, his, their or any or either of their executors, respective heirs, executors, administrators and assigns, to all intents and purposes whatsoever, shall be binding and conclusive on all the said partners and their respective heirs, executors, administrators and assigns. Provided also and it is hereby further declared and agreed, that the persons elected or to be elected on the committee of the said copartnership, and every of them, also all and every the present and future trustees or trustee thereof, and their respective heirs, executors and administrators, shall now and always stand and be indem-

1844.

---

BAXTER  
and  
NEWMAN.

1844.

---

**BAXTER  
and  
NEWMAN.**

nified and saved harmless by the copartnership in and for all lawful acts, deeds and transactions done, performed and executed in pursuance and by virtue of these presents, and the lands, stock, property, estates and effects of and belonging to the said company or copartnership, shall in the first place be appropriated and supplied, and the same is and are hereby declared to be subject and liable, to indemnify, exonerate and discharge them, and every of them, of, from and against all actions, suits and prosecutions whatsoever, and also to reimburse them the said committee, trustees and trustee, and every of them, for the time being, their and every of their heirs, executors and administrators, estates and effects, all such costs, charges, expenses and demands, as shall or may happen or arise to them or any of them, or which they or any of them shall reasonably expend, sustain or be put unto, and also subject and liable to such a reasonable allowance to the said committee for their loss of time as a majority of the said partners shall adjudge in, for and concerning the trusts aforesaid, or any of them, on the execution or performance thereof."

The said mill was built according to the terms of the partnership deed, and the business and trades were carried on therein in manner following :

The concerns of the company were managed by a committee appointed by a general meeting of shareholders, and the committee were in the occupation of the mill and premises, and employed servants to work it.

The mill was used for the purpose of fulling cloth. The shareholders did not carry on one trade jointly together, but each shareholder brought his own cloth to be fulled at the mill. If any other person, who was not a shareholder, brought cloth to be fulled at the mill, he was charged a certain sum for the use of the mill, which

was paid to the committee ; and every shareholder who brought cloth to be fulled at the mill was debited with the same sum proportionably for the amount of cloth which he had fulled at the mill in the general annual settlement of the profits arising from the use of the mill.

1844.

---

 BAXTER  
and  
NEWMAN.

The trustees had, under the powers of the partnership deed, and with the consent of the general meeting of the shareholders, borrowed sums of money for the purposes of the mill, for which they had given bonds and notes in their own names only, and no part of the partnership property had been mortgaged.

The personal property of the company was greater in amount than the sums so borrowed by the trustees, and was sufficient to meet such sums and interest thereon, and all other liabilities incurred by the company or by the trustees in their behalf.

The amount of shares possessed by each of the above claimants respectively in the real property of the company was sufficient to confer a vote, provided the interest acquired by such shares could be considered as an interest in Real property. It was objected before the revising barrister that the interest acquired by the above claimants as the owners of shares was only an interest in personalty. Objection.

With regard to the above claimants, Jonas Bateman and John Brooksbank, it was also objected that the money so borrowed by the trustees on bonds and notes as aforesaid should be considered as a mortgage on the real property of the company, and that such sums, with interest thereon, shall be deducted from the value of the real property.

The revising barrister overruled the objections in the case of each of the above claimants, and allowed the votes of each claimant respectively. Barrister's decision.

1844.

---

BAXTER  
and  
NEWMAN.

*R. Hildyard* for the appellant. There is a partnership of several individuals in *personal* property; viz. the profits derived from grinding the corn of the public at the mill in question. It cannot be successfully argued that there was any real estate vested in the partnership firm from which the members of it are capable of deriving the franchise; first, because by agreement they are only entitled to participate in the profits derived from the estate; and secondly, because they are by the same means debarred from any control over it: their only interest is in the money earned. The shares in the Chelsea Water Works Company are not distinguishable from the interest of the partners in this mill; and the former interest has been held to be personal property only. In both cases the shareholders only claim participation in the profits, *Bligh v. Brent* (a), *Bradley v. Holdsworth* (b).

The legal estate in the mill is vested in trustees, and the *cestui que trust* only looks to the profits which are made and periodically divided.

*Martin* for the respondent. The case referred to (*Bligh v. Brent*) is quite distinguishable from the present question of a right to the franchise. The shares in that case were held to be personal property under the statute creating them, and for some purposes only. He referred to the facts stated in the case, and argued that the parties had a freehold estate of the requisite value to confer the franchise. It matters not whether the interest be legal or equitable. There would be great danger in holding the construction, for which the appellants contend, to be good. It would have the effect of disfran-

(a) 2 Y. &amp; Col. 268, Exch. R.

(b) 3 M. &amp; W. 422.

chising all persons jointly interested in real property; thus a large and influential class, who hold partnership buildings for trading purposes, would be disqualified from voting. The terms upon which these parties have agreed to enjoy their common property cannot alter the nature of the property, or divest it of the legal incidents to real estate. The circumstance, that any one shareholder who uses the mill more than his fellows is obliged to pay for such extra uses, cannot affect the present question. It is only analogous to an agreement between two joint tenants of a farm, that one shall occupy the whole and pay a moiety of the rent to his companion. It is the mode hit upon by the parties to divide equally the annual enjoyment of the estate. Nothing short of an act of parliament can turn real property into a mere personal interest, which was the case in the Chelsea Water Works Company. No arrangement or agreement between parties can have such an effect. He also cited *R. v. Hull Dock Company* (a), *Ex parte Vauxhall Bridge Company* (b), *Ex parte Lancaster Canal Company* (c), *Pickering v. Ingram* (d). Unless the parties are admitted to vote, the property will be unrepresented, and a large body of voters disfranchised. [*Maule, J.* referred to the *Attorney-General v. Nangles* (e).]

1844.

---

 BAXTER  
and  
NEWMAN.

*Hildyard* in reply. The trustees of this property have the legal estate, and the sole control over the management of the estate; the shareholders only claim the profits, and could interfere by no other means than by the assistance of a Court of Equity; the additional

(a) 1 T. R. 219.

(b) 1 Glyn. &amp; Jam. 101.

(c) 1 Mont. &amp; B. 77.

(d) 2 Ves. 7.

(e) 5 M. &amp; W. 120.

1844.

BAXTER  
and  
NEWMAN.

right to full their own cloth at the mill is a mere easement. No answer has been given to the authority first cited (*Bligh v. Brent*); the trustees here are different persons from those entitled as shareholders; but in that case the corporation had the legal fee, and claimed the profits too.

The true question is, what interest have these parties reserved to themselves? It cannot be denied that they could modify their own interest, by conveying away any quantity of estate to trustees upon trust to pay them the profits to be realized by the trustees' management. There need be no disqualification of the property, the trustees may be registered.

*Cur. adv. vult.*

TINDAL, C. J.—In this case there were thirty-seven persons who claimed a right of voting for the West Riding of Yorkshire in respect of qualifications described upon the list as freehold shares in a mill, house and land. The revising barrister found that the amount of shares possessed by each of the claimants in the real property of the company, was sufficient to confer a vote, provided the interest acquired by the shares could be considered as interest in the real property. The objection taken before him was, that the interest acquired by the several claimants as owners of such shares was an interest in personalty only, not in lands; but the revising barrister overruled this objection as well as another, which applies solely to the case of two of the claimants, Bateman and Brooksbank, to which objection we shall afterwards advert, and allowed the votes of all the claimants. We are of opinion that the revising barrister was right in his decision, and that the votes of the several claimants ought to be allowed.

That the claimants took no legal interest in the real property is placed beyond a doubt. The freehold land was purchased with money contributed by the several claimants and other shareholders, and conveyed to trustees unto and to the use of them, their heirs and assigns absolutely, the trusts, subject to which the trustees were seised, being declared by the co-partnership deed subsequently executed by the trustees and the several members of the co-partnership thereby created. And the only question is, whether the claimants took such an equitable interest in the realty as will by law give them a right to vote; for, under the provisions of the 7 & 8 Will. 3; 18 Geo. 2; 2 Will. 4; and the 5 & 6 Vict., a person seised in equity is to have the same right to vote as if he had the seisin in law of a freehold estate to the value of 40s. by the year, according to the provisions of the statute 5 Hen. 6. And the ground on which we consider the claimants to have such right is this, that the property of which the trustees are seised in trust for the benefit of the shareholders who formed the co-partnership is freehold land; that if the co-partners by their committee are in possession thereof, then the trusts declared by the deed are no more than agreements and regulations entered into between the co-partners for the better carrying on the joint trade by means of this land and the mill erected thereon, and are not trusts which are inconsistent with an equitable seisin of the freehold in the co-partners. And lastly, that it is found by the revising barrister that the amount of the shares of each of the claimants in the real property of the company is sufficient in value to confer a vote.

It is undoubtedly true, as was urged at the bar, that the trusts declared by the copartnership are such as that a Court of Equity will deal with real property as per-

1844.

---

BAXTER  
and  
NEWMAN.

1844.

---

BAXTER  
and  
NEWMAN.

sonalty, so far as it was necessary to carry the intention of this trading copartnership into execution. In general there can be no question but that, for all purposes necessary to effectuate the intention of the parties, personal estate may be considered as real and real estate as personal by a Court of Equity, as in the ordinary case of money agreed or directed to be laid out in land ; so in the instance of real estate under an absolute trust or direction to sell. And then against the general rule our decision in the present case will not in any manner militate. But notwithstanding this acknowledged doctrine of the Court of Equity, no one can deny that the land still remains land and nothing else, and there is no authority or decision that for the collateral purpose of giving a vote, which has no bearing on or reference whatever to the objects of the deed of copartnership, the right of the *cestui que trust* shall not remain just as it would have been without such declaration of trust ; for as to the declaration by a copartner of the deed, that the land and building should be deemed and considered as of and in the nature of personal estate, and not real estate, we think the generality of such words must necessarily be limited by the subject-matter of the trusts declared by the deed, and that they can extend no further than the objects and purposes of the deed require. And further, we think it may be considered as a very doubtful question whether the private agreement of parties, or any authority short of that of an act of parliament, can deprive the owners of the freehold of the right of voting for members of parliament, which is a right inherent in the owners of the freehold, not for their own benefit, but for that of the community of which they form a part.

But, however it may be, it appears to us this right is left altogether untouched by the objects and purposes



for which the trusts of the deed now under consideration are created and declared.

1844.

---

BAXTER  
and  
NEWMAN.

This deed discloses no trust whatever of the freehold, but as it appears by the statement of the case, that the land was purchased with the money of the several shareholders or copartners, it follows under the purchase deed that there was a resulting trust as to the fee-simple and inheritance for their benefit, so that each of them would be entitled to his share in the beneficial interest therein proportioned to his share of the purchase money. The partnership deed does not alter the proportion in which the partners are interested, nor does it confer on a stranger any portion of the interest in the land ; it only regulates the mode in which the property is to be managed and enjoyed according to the quantity of interest of each shareholder therein, and it is the language of Lord Eldon in the case of *Crawshaw v. Maule* (a), when speaking of a freehold estate purchased by partners for trading and personal purposes, " the estate, though personal in enjoyment, is freehold in its nature and quality," and it is to the nature and quality of the estate we are to look, and not to the mode of enjoyment, when we have to decide whether it confers a vote. It was objected on the part of the plaintiff that the case of *Bligh v. Brett* was no authority against the claimant, inasmuch as it proved that the share of a company, the profits whereof were derivable from land, were personal property and not real. But we think it sufficient to advert to a broad ground of distinction between that case and the present. In the case referred to, the company, that of the Chelsea Water Works, were a corporation created by an act of parliament and a charter from the crown, of which the individual shareholders were corpo-

(a) 1 Swanst. 521.

1844.

---

**BAXTER  
and  
NEWMAN.**

rators. The whole of the real property was vested in a corporation aggregate, who had the sole management and controul thereof, having power to convert it into personalty or back again into realty at their free pleasure, the individual corporators having as individuals no more interest in the freehold than perfect strangers, and no interest in the surplus of profits of the concern till they actually arose. In the present case the freehold is in trustees for the benefit of individual copartners in a trade to be managed and conducted by a committee appointed by themselves. And in many other cases of shareholders in joint stock companies, where the company has been incorporated by act of parliament, the legislature has expressly declared that the shares shall be deemed personal estate, and transmissible as such, and not of the nature of real property. Such was the case of the Vauxhall Bridge Company and of the Lancaster Canal Company and others, in which cases it may be conceded they could not have a freehold interest in the several shares, so as to entitle them to vote, whereas in the cases before us there is no other than the voluntary declaration by the parties themselves that the real estate shall be considered as personal. Upon these principles, therefore, that the land and the mill and buildings thereon are the places which were the subject-matter of the trade out of which the profits arise, and are to be distributed among the shareholders ; that the trusts relate only to the management and conduct of the land and the mill and the trade carried on by means of the same ; that there is no trust declared inconsistent with an equitable interest in the freehold in the respective copartners ; that the copartners are by their committee in possession ; and, lastly, that the value of each man's share is sufficient to enable him to vote ; we think the share-

holders had an equitable seisin and a sufficient estate to enable them to vote for the county.—As to the objection raised against the right of the two particular claimants Bateman and Brooksbank, we see no ground for considering the money borrowed by the trustees on bond and notes as having the effect of a mortgage on such shares, and, indeed, this objection is little relied on in argument. Upon the whole, therefore, we think the decision right and ought to be affirmed.

1844.

---

BAXTER  
and  
NEWMAN.

Decision affirmed.

---

DANIEL, *Appellant*, and CAMPLIN, *Respondent*.

THIS was a consolidated appeal from the decision of the revising barrister for the county and city of Bristol, and the following case was stated for the opinion of the Court.

CASE.

The name of W. Camplin was inserted in the list of voters thus: "Camplin William, High Street, House and Shop, High Street." W. Camplin occupied the house and shop which conferred his qualification jointly with another person. The premises were of sufficient value, and all the other requisites necessary to give W. Camplin a vote had been complied with. The objection was that the qualification stated upon the list should not have been "house and shop" merely, but ought to have been "*the joint occupation* of a house and shop."

It was contended on the other hand, that the words "house and shop" sufficiently described the qualification; but, if not, the revising barrister was requested, under

In a case of joint occupancy of sufficient value, it is not necessary under 2 & 3 Will. 4, c. 45, s. 29, for a claimant to state that fact. Held also that it is not necessary, under 2 & 3 Will. 4, c. 45, and 6 Vict. c. 18, to state the nature of the voter's interest in the property for which he claims. A description of the species of the property is sufficient. Objection.

1844.  
DANIEL  
and  
CAMPLIN.  
Barrister's  
decision.

the powers given to him by the 40th section of the Registration Act, to insert such words as would make it appear that the occupation was joint. He decided that the qualification as stated upon the list was sufficient, and retained the name.

*Kinglake*, Serjt. for the appellant. The claimant in this case was not entitled to vote as tenant of the house and shop, being a joint occupier. Section 27 of the Reform Act confers the right upon the sole occupier of a house, and section 29 gives the right to joint occupiers in these express words. "That where any premises, &c. shall be jointly occupied by more persons than one as owners or tenants, each of such joint occupiers shall, subject to the conditions hereinbefore contained as to persons occupying premises in any such city, borough, or place, be entitled to vote in the election for such city or borough, in respect of the premises so jointly occupied, in case the clear yearly value of such premises shall be of an amount which, when divided by the number of such occupiers, shall give a sum of not less than 10*l.* for each and every such occupier, but not otherwise." It is clear therefore that no joint occupiers are entitled to vote under section 27, but that the latter section alone gives the claimant a right to be registered. And he ought to have brought his qualification within its words. As it stands, the description of his qualification is insufficient, on the principle which was decided in *Bartlett v. Gibbs* (a), the objector ought to be in a situation to ascertain whether the premises were of sufficient value or not to qualify all the occupiers. Here a person might go to the premises, and find them to be above the annual value of 10*l.*, but until he was informed that

(a) 1 P. & R. Reg. Ca. 46.

they were held by joint occupiers, it would be impossible for him to discover that there was a deficiency in the qualification. It should be apparent that the party does not claim for the whole. In *Rex v. The Inhabitants of Great Wakering (a)*, which was a question of settlement arising on a case of joint demise of premises of the yearly value of 16*l.*, it is remarked by *Littledale, J.* "The demise being to two as joint tenants, each was entitled to occupy an undivided moiety in his own right," here also the claimant was but a tenant of an undivided moiety of the house and shop, and not the sole occupier. Again, the barrister had no power to amend a material misdescription under section 40 of the Registration Act, there is a variance between the fact and the description which cannot be cured, and must be fatal.

1844.

---

 DANIEL  
and  
CAMPLIN.

*Butt* for respondents. The description given in the form which is common to sections 27 and 29 has been strictly followed in the present case. The form given in Schedule I. No. 1, has but one heading to the column, which is "Nature of Qualification," and the instances given are, house, warehouse, shop, counting house, which merely refers to the description of the property, and not to the nature of the claimant's interest. A joint tenant is in law the tenant of the whole house, and a notice to quit given by one of several joint tenants operates as a notice by all. *Bartlett and Gibbs* does not apply, that was a case of successive occupation of two different houses, and the nature of the property which went to make up the qualification was improperly described.

*Kinglake*, Serjt. in reply, urged that if a description.

(a) 5 B. & Ad. 971.

1844.

---

DANIEL  
and  
CAMPLIN.

like the present were held sufficient; parties objecting could not receive the information which the legislature intended to afford, and that it would give rise to frauds in the register.

TINDAL, C. J.—I am of opinion that the decision of the revising barrister is right, the real question is whether in case of a joint occupancy it is necessary to state that fact; I think we ought to be careful not to impose any regulation that is not strictly required by the act 6 Vict. c. 18. Now section 13 of that act provides that a list shall be made out by the overseers, who are to publish it, and that it is to be in the form No. 3, in Schedule (B.) That form has four columns, the first headed, "Christian name and surname of each claimant, at full length;" second, "Place of abode;" third, "Nature of Qualification;" and they are all left blank. Had there been no other form given either by this act or 2 Will. 4, c. 45, there might have been a difficulty as to the mode of filling up this blank; we find however in form No. 12, in Schedule (B.) of the late act, which is entitled, "List of persons objected to, to be published by the overseers," the column headed "Nature of the supposed qualification" is left a blank. In the corresponding form, No. 7, Schedule (I.), to the earlier act, under the column similarly headed we find the word "shop" given as an instance; that is the subject-matter of the qualification, the property in respect of which the right to vote is claimed. Upon the whole I think it may be fairly inferred, that where we find a heading to the column in the last act, "Nature of qualification," which is left a blank, it was intended that one of those instances pointed out by the former statute should be

inserted, and that a description in the terms of the qualifying clause of that act is sufficient. I do not think that the principle involved in our decision in *Bartlett* and *Gibbs* bears upon the present question, where there can be no doubt but that the subject-matter of the qualification is properly described. The nature of the occupation is a mere quality incident to the possession. The right of voting is given to occupiers by 2 Will. 4, c. 48, s. 27, whether owners or tenants; but it has not been considered necessary to state whether their occupation is as owners or tenants; and in the case of joint occupation, where no vote would be acquired unless the building subdivided would give each occupant a vote, a party is not required to state whether he occupies as sole or joint tenant. In what mode the amount necessary to qualify may be made up, seems to be entirely a matter of evidence. Upon the whole, therefore, I think that the party in question has been properly placed on the register, and that the requirements of the act have been fully satisfied.

1844.

---

DANIEL  
and  
CAMPLIN.

MAULE J.—I am of the same opinion. The whole question turns upon the 13th section of 6 Vict. c. 11, and the part of form No. 3, which is headed "Nature of Qualification." Sect. 13 requires the overseers to make out the list of persons entitled to vote according to that form, and to state the nature of the qualification, and in filling up that column they have used the term "house and shop" as descriptive of the qualification. We may assume that the premises are of the yearly value of £10, but it is contended that this description was improper, inasmuch as it ought to have stated that the voter occupied the house and shop in conjunction with other persons, not exceeding a certain number, so

1844.

---

DANIEL  
and  
CAMPLIN.

that it might be ascertained whether the premises were of sufficient value to confer the franchise on all the occupiers. We have not to determine whether such a description would be convenient or not, but to see what the act requires. Our decision with respect to successive occupations has been referred to as an authority in the present case, but there the inconvenience was greater, and there was also an entire absence of one part of the qualification, and material information was withheld. On looking at the forms of claim, it appears to me that the form No. 6, Schedule (B.), alludes merely to the species of property in respect of which the right is claimed, and I feel confirmed in this view by the forms in the other schedules. We must also bear in mind that this list is made out by public officers, who have not the means of stating a qualification with the same particularity as a party making a claim. Upon the whole, I think the decision right.

CRESSWELL, J.—I am of the same opinion; sect. 27 gives the right of voting to certain occupiers, whether owners or tenants, and the heading of the schedule in respect of both species of property is the same, and I, therefore, conclude that the meaning of "Nature of qualification" is the species of property they occupied, whether it be a house, warehouse, counting-house or shop, and not the nature of the voter's interest in it. I do not think that the act requires more than the description of the property to be stated, and we should be imposing new difficulties by deciding that the title under which property is occupied should be stated. No analogy exists between the schedule before us and that applicable to county votes; in the latter the title confers the right. It is enough if a party occupy property of



the specified nature of sufficient value, and it is for the objector to ascertain whether he occupies as joint tenant or tenant in common.

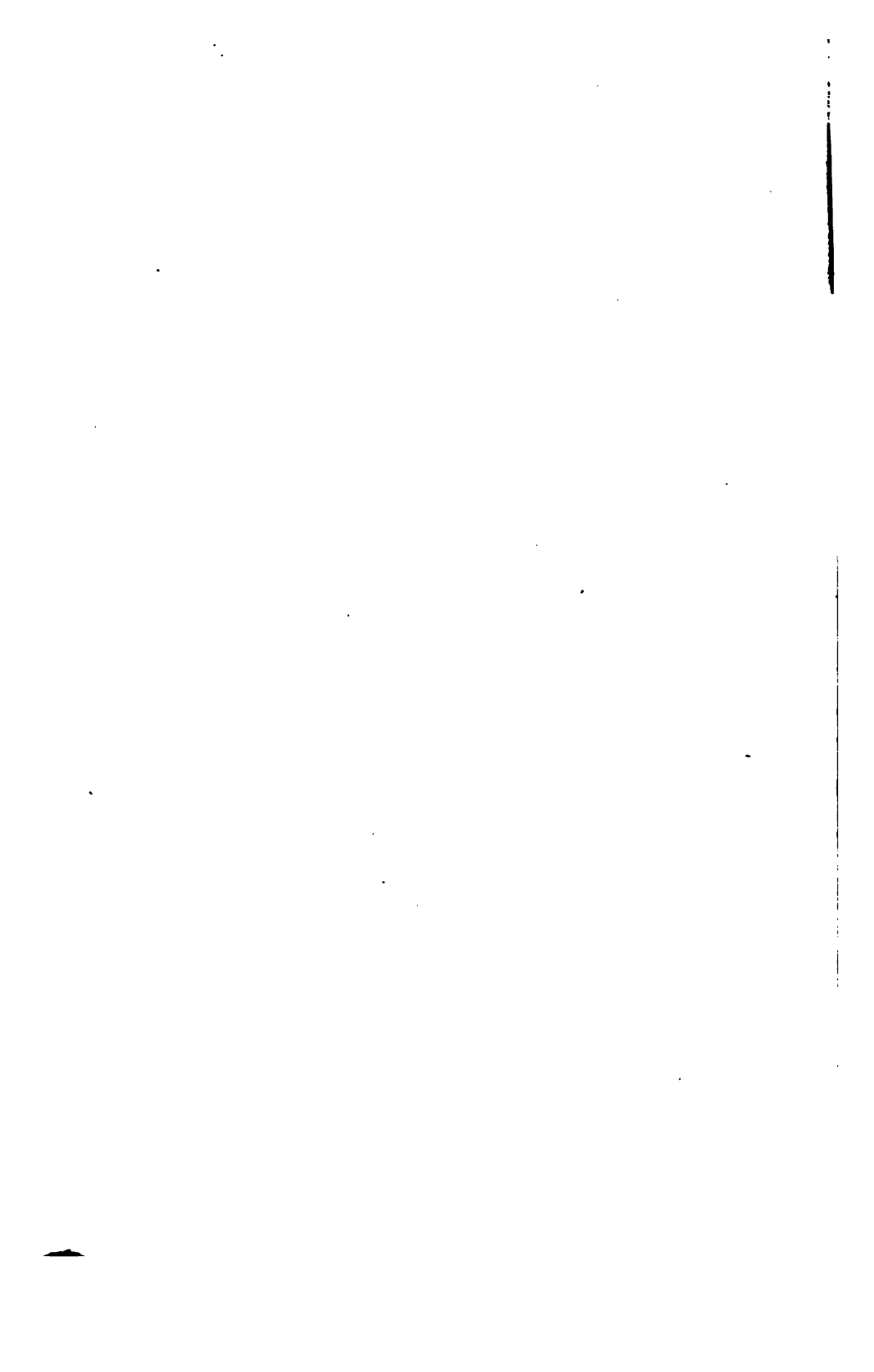
1844.

---

DANIEL  
and  
CAMPLIN.

ERLE, J.—The act does not appear to me to call upon a party to state what we may term the incidents to the property. It must be of the value of £10 per annum, and it must be rated; yet these incidents need not be specified. If a voter doubts whether a party is entitled to vote, surely if the name and description are supplied he has sufficient information to enable him to prosecute his inquiry. The case of successive occupation referred to differs widely from the present; there occupation for a year can alone confer the right to vote, and if only one set of premises is mentioned, the inference is that the claimant had occupied them for a whole year.

Decision affirmed.



C A S E S

DECIDED IN THE

COURT OF COMMON PLEAS

ON

APPEAL

FROM

THE REVISING BARRISTERS.

1845—6.

BARTON, *Appellant*, and ASHLEY, *Respondent*.

1845.

**THIS** was an appeal from the revising barrister for the city of Lichfield.

CASE.

William Barton objected to the name of Thomas Ashley being retained on the list. The objector duly proved the service of a notice of objection upon the said Thomas Ashley, according to the form No. 11, in schedule (B.) of stat. 6 Vict. c. 18, and he also gave in evidence and proved the service of a notice of objection upon the overseers of the parish of St. Michael, in the list of which parish containing the names of persons entitled to vote in the election of members of parliament for the said city, by virtue of the provisions of stat. 2 Will. IV. c. 45, the name of the said Thomas Ashley appeared as follows: that is to say, "The list of persons entitled to vote in the election of members for the city

Where there is more than one list of voters, a notice of objection to the overseers must specify the list to which the objection refers, in accordance with the note to form No. 10, schedule (B.) of 6 Vict. c. 18.

1845.

BARTON  
and  
ASHLEY.

of Lichfield, in respect of property occupied within the parish of St. Michael, by virtue of an act (2 Will. IV. c. 45), intituled 'An Act to amend the Representation of the People in England and Wales.'"

Christian Name and Surname in full.	Place of Abode.	Nature of Qualification.	Street, Lane, or like place in this Parish, No. of House where the Property is situate.
Ashley, Thomas.	Greenhill.	House.	Greenhill.

The last mentioned notice of objection was in the following words:—"Notice of objection to the overseers of the parish of St. Michael, in the city of Lichfield. I hereby give you notice, that I object to the name of Thomas Ashley being retained in the list of persons entitled to vote in the election of members for the city of Lichfield. Dated this 25th day of August, 1845. Signed, William Barton, of Stowe Street, Lichfield, on the list of freemen for the city of Lichfield."

In the city of Lichfield it is the duty of the overseers of the several parishes, and, amongst the rest, of the said parish of St. Michael, to make out and publish two separate lists of persons entitled to vote in the election of members for the said city. The one, in respect of persons entitled to vote in the election of members for the said city, in respect of property occupied within the said parish, by virtue of the provisions of stat. 2 Will. IV. c. 45; and the other, of persons not being freemen entitled to vote in the election of members for the said city, in respect of any right other than those conferred by the said last-mentioned statute. The name of the said Thomas Ashley only appeared on the first mentioned list of voters, namely, the list of persons entitled to vote by reason of the provision of stat. 2 Will. IV. c. 45, and did not appear on the other list made out and publish-

ed by the overseers. In the list of objections published by the overseers, the said Thomas Ashley was described as in the original list hereinbefore set forth. It was objected, on the part of the said Thomas Ashley, that the said notice of objection served on the overseers was insufficient, as it did not comply with the directions given in schedule (B.), No. 10, of stat. 6 Vict. c. 18, there being two lists of voters made out by the overseers in that parish, and the notice not specifying the particular list to which the objection referred.

1845.  
BARTON  
and  
ASHLEY.  
Objection.

The revising barrister held the notice to be insufficient; but as the said Thomas Ashley was present, and then consented that the proof of his qualification should be gone into, subject to the question of the validity of the said notice of objection, he proceeded to call evidence in support of his right to have his name retained in the said list, but failed to prove the same. Barrister's decision.

The question for the opinion of the Court is, whether, upon the facts above stated, the notice of objection to the overseers of the said parish of St. Michael was or was not sufficient in law to call upon the said Thomas Ashley to prove his title to have his name retained in the said list. Question.

*Kinglake*, Serjt., argued for the appellant. The overseer cannot require great particularity of description as to lists which he himself makes out. The form of notice need not be strictly followed; but by sect. 67 may be "to the like effect." If two voters of the same name appeared on different lists, the necessity for great strictness would arise; but when the overseer neither is nor can be misled, the statutes will be complied with by a substantive observance of the forms given in the schedules.

1845.

---

BARTON  
and  
ASHLEY.

He cited *Allen v. House* (a). But, secondly, the objection is waived, the notice has been acted upon and the qualification of the voter failed of proof. [*Maule*, J. referred to sect. 40 of 6 Vict. c. 18. The notice required must have been given.]

*Byles*, Serjt., for the respondent.

TINDAL, C. J.—The argument as to waiver has been disposed of; and as to the objection to the form of the notice, I think the matter too plain for argument. The notice omitted to specify to which list the objection was directed. It is an omission of a description required to be given by the note to the form No. 10 of schedule (B.) (stat. 6 Vict. c. 18), we must be governed by the express words of the statute.

COLTMAN, J. concurred.

MAULE, J.—I think the overseer was entitled to the information which has been withheld from him by the present notice, and which may cause him trouble that the statute intended he should not have.

ERLE, J. concurred.

Decision affirmed with costs.

(a) *Ante*, p. 146.

---

1845.

*WALKER, Appellant, and PAYNE, Respondent.*

THIS was an appeal from the decision of the revising barrister for the county of Middlesex.

A voter's "place of abode" was described on a county list as "travelling abroad." Held sufficient.

## CASE.

The name, place of abode, and qualification of William Gibbs, as a voter in respect of property situate within the hamlet of Mile End Old Town, were described in the register for the said county in the following words, that is to say :

Christian Name, &c.	Place of Abode.	Nature of Qualification.	Street, &c. where the property is situate.
Gibbs, William.	Travelling abroad.	Freehold house.	32, Heath Street.

This name was objected to by the appellant, and it was proved that the voter was, and for several years had been, travelling abroad, and had no fixed place of abode ; but it was contended by the appellant, that as no place of abode was given, the name ought to be expunged. Objection.

The revising barrister was of opinion, that as the voter had no fixed place of abode, but was travelling abroad, he, the revising barrister, was not at liberty to expunge the voter's name and he therefore retained it. Barrister's opinion and decision.

*T. Atkinson* in support of the appeal. This is a total omission of the place of abode within the meaning of 6 Vict. c. 18, s. 40. The object of the Reform Act, 2 Will. IV. c. 45, appears from sections 37 and 38 to have been that a fixed place of abode should be given.

1845.

WALKER  
and  
PAYNE.

This appears particularly from the concluding words of s. 37, "*so long as he shall retain the same qualification, and continue in the same place of abode.*" And accordingly in the examples given in schedule (H.), No. 3, of that act, fixed places of abode are inserted, as "*Cheapside, London,*" &c. The object was to secure the identity of the voter and to avoid personification. In the schedule of 6 Vict. c. 18, these examples of the mode of filling up the claim are not repeated, but being in *pari materia* the same mode of filling up the blanks will be required. The 46th section of 6 Vict. c. 18, gives revising barristers power to inflict costs, and sect. 71, which prescribes modes in which those costs are to be levied, directs notice to be left at the place of abode. This direction would be totally inoperative, if such a claim as this were allowed. [*Tindal*, C. J. At any rate he might change his place of abode, and there the same difficulty would arise. Your argument would apply to every officer on foreign service.]

*Phipson* contrà was stopped by the Court.

TINDAL, C. J.—The meaning is that the place of abode should be inserted, if the person has a place of abode. It never was intended that a person travelling abroad should lose his vote. If a place of abode had been given, then the objection would have been that he was in fact travelling.

COLTMAN, J.—If he had no place of abode, nothing has been omitted that could be inserted.

MAULE, J.—If a man had no christian name, which



is not impossible, it would not be necessary to state one.

1845.

---

WALKER  
and  
PAYNE.

ERLE, J.—The words refer to the name, christian name and place of abode. If a man be a traveller by occupation and profession, it surely is enough to state the fact in the manner which has here been adopted.

Appeal dismissed.

---

HITCHINS, *Appellant*, and BROWN, *Respondent*.

THIS was a consolidated appeal from the decision of the revising barrister for the city of Lincoln.

Where the qualification was in respect of two houses occupied in succession, a notice to the overseer describing the nature of qualification in the third column as "house," and giving a sufficient description of both houses in the fourth column, was held a sufficient notice.

CASE.

William Upton appeared to have given due notice of his claim to have his name inserted in the list of persons entitled to vote in respect of property occupied within the parish of St. Peter at Arches. The notice of claim was as follows :

" Notice of Claim.

" To the overseers of the parish of St. Peter at Arches, in the city of Lincoln.

" I hereby give you notice that I claim to have my name inserted in the list, made by you, of persons entitled to vote in the election of members for the city of Lincoln, and that the particulars of my qualification and place of abode are stated in the columns below.  
Dated the 23rd day of August, 1845."

1845.

HITCHINS  
and  
BROWN.

Christian name and surname of the claimant at full length.	Place of Abode.	Nature of Qualification.	Street, lane, or other place in the parish or township where the property is situate, and number of the house, (if any), when the right depends on property.
William Upton.	Much Lane, St. Peter at Arches, Lincoln.	House.	No. 5½, Much Lane, St. Peter at Arches, Lincoln, and previously in the occupation of a house, No. 21, St. Mary's Street, in the parish of St. Mary-le Wigford, Lincoln. William Upton.

Objection.

He proved that he had occupied the two houses described in the fourth column of his claim in immediate succession, and had done all other things required by law to entitle him to have his name inserted. The insertion of his name was duly objected to by James Hitchins, a registered voter for the said city, on the ground that the nature of his qualification was insufficiently described for the purpose of being identified.

Barrister's decision,

On behalf of William Upton it was argued, first, that the description was sufficient; second, that if not, the revising barrister had power to correct the same.

The revising barrister decided that the nature of the qualification was not insufficiently described for the purpose of being identified, but at the claimant's request he altered the statement as follows :

Christian name and Surname.	Place of Abode.	Nature of Qualification.	Street, &c.
William Upton	Much Lane, St. Peter at Arches, Lincoln.	Houses occupied in immediate succession.	21, St. Mary's Street, St. Mary-le-Wigford, and No. 5½, Much Lane, St. Peter at Arches.

And inserted his name with such alterations in his list.

*Manning*, Serjt., for the appellant. Instead of describing the property as *houses occupied in succession*, it is described simply as *house*. In *Bartlett v. Gibbs* (a) the same mistake had been made. The earlier part of sect. 40 of 6 Vict. c. 18, points out what alterations the revising barrister may make. I do not complain that the form as to the heading given in Schedule 6 has not been followed, but that the blanks in the schedule have been improperly filled up. [*Tindal C. J. Bartlett v. Gibbs* is not in all points the same case. This is an objection to the claim sent in. That was an objection to the description as it appeared on the voters' list. Here the successive occupation, though not appearing in the third column, does appear in the fourth. In the case referred to it appeared nowhere.] The principle is the same. The first difference is in favour of the appellant. For in *Bartlett v. Gibbs* the mistake was made by the overseer. Here the mistake is made by the voter himself. The second difference is certainly in favour of the respondent. But there is no real distinction. The party is bound to pursue the act which directs that he should under the third column state the nature of his qualification. A person examining any list of voters and looking to the third column for the nature of qualification, when he there finds a qualification set out which he knows not to be true, has a right to confine his attention to that column and is not bound to look to any other column. If the nature of the qualification may be stated in the fourth column, there is no reason why a defective statement in the third column may not be eked out by a memorandum sent to the overseer at the time of sending in the claim. This fact of successive occupation might as reasonably have been stated in

1845.

---

 HITCHINS  
and  
BROWN.
(a) *Ante*, p. 46.

1845.

HITCHINS  
and  
BROWN.

the first column as in the fourth. [*Tindal*, C. J. The most that you can insist on is that it should have been *houses*.] That would not have been sufficient. A person may claim in three ways ; first for a *house*, secondly for *houses*, under which he may show that he occupied two houses, each worth 10*l.* per annum, and if either of them be proved worth 10*l.* per annum, though the other should turn out to be worth less, yet his claim will be allowed ; thirdly, he may claim for *houses occupied in succession*, which should have been done in the present case. The fourth column is not intended to show the nature of the qualification but only its place. [*Erle*, J. It can only be by reading the fourth column that the objector could find out that the third was wrong.] If the act intended that only strangers were to object, that observation is correct. But I suppose that a person knowing the voters (and without such local knowledge he would be unfit for his duty,) goes to examine the register, and then on looking at the third column he knows Mr. Upton is wrongly described. [*Erle*, J. He is described as claiming that generic qualification *house* as contradistinguished from land. *Tindal*, C. J. In *Bartlett v. Gibbs*, the decision was founded on the insufficiency of the fourth column. *Erle*, J. There the objector seeing the qualification described as East Street, and finding that that house was not occupied by claimant, and not finding any other place mentioned in the claim, was held to be right in his objection.]

*Clark*, Serjt., *contrà* was stopped by the Court.

TINDAL, C. J.—The description was proper as it originally stood in the third column. The question depends

on 6 Vict. c. 18, s. 15, and the form given in sched. (B.) No. 6. From these it is clear that the third column was intended to point out the general nature, and that the fourth was to be only a more particular exposition of the third. This appears from the heading of the fourth column. The words then in italics (*where the right depends on property*), mean that the preceding column having called the attention of the reader to the nature of the qualification, when it is household or land, &c. in contradistinction to bygone claims, such as are reserved by 2 Will. IV., c. 25, s. 33, the fourth is to serve as a kind of rubric or direction. It is quite clear the third column was not meant to be as distinct as the fourth. If so, of what use would the fourth be. The argument and judgment in *Bartlett v. Gibbs* were all founded on the fourth column. There only East Street was mentioned, whereas the actual qualification depended on a house in West Street also. The fourth column was not sufficient, and the revising barrister had no right to alter it. The description in the third column in the present case was a sufficient description according to the act.

1845.

---

 HITCHINS  
and  
BROWN.

COLTMAN, J.—This case is distinguishable from *Bartlett v. Gibbs*. There the substantial objection was that the register did not set out the qualification, because really there were two houses, whereas only one was set out. I think that here as the claim originally stood, it was sufficient; at the same time it was a proper act of the revising barrister to alter it as he has done, and it is precisely a case contemplated by the statute. The qualification is the same as it was before, but more clearly set out.

1845

HITCHINS  
and  
BROWN.

MAULE, J. who was absent during part of the argument, agreed with the rest of the Court.

ERLE J.—The party here described the nature of his qualification sufficiently. It was intended that under the third column parties should give the nature of their qualification, and the fourth column was intended to be that to which parties desirous of knowing more were to apply. I think the statement in the third column was sufficient, because the nature of the qualification is *house*, but that kind of it which is mentioned in 2 Will. IV. c. 25, s. 28. The decision in the case of *Bartlett v. Gibbs* was right, for there the claimant did not rely for his qualification on the house in East Street only, but also on one in West Street. If there had been any reference to that, the case might have been otherwise decided.

Appeal dismissed with costs.

PRUEN, *Appellant*, and Cox, *Respondent*.

The description of an objector's place of abode in his notice of objection need not be precisely similar with that on the register. The former gave the address with more particularity than the latter. Held good.

THIS was a consolidated appeal from the decision of the revising barrister for the eastern division of the county of Gloucester.

CASE.

J. S. Cox objected to the name of R. Winterbotham being retained upon the list of voters. The notice of objection was duly given, and was in the proper form, but the objector described his place of abode as "No. 398, High Street, Cheltenham," and as in the register of voters for the parish of Cirencester: the name of the

objector was in the list of voters, but his place of abode, as described in that list, was Cheltenham only. Cheltenham is a parish within the said eastern division, and No. 398, High Street, is within the said parish of Cheltenham, and the true place of abode of the objector. It was contended that the objector ought to have omitted No. 398, High Street, in the description of his place of abode, and described it generally, "Cheltenham" only, as it appeared on the register of voters.

1845.

---

 PRUEN  
and  
Cox.

The revising barrister thought the description good, and, the voter being unable to prove his qualification, expunged his name. Barrister's decision.

If the Court were of opinion that the decision was wrong, the name was to be restored. Question.

*Cockburn* argued, on behalf of the appellant, that the description of the objector's place of abode in the notice of objection should not vary from that inserted in the register. Here the former is more full in particulars than the latter, but it may mislead: the rule on the subject should be uniform. The judgment of Maule, J. and Erle, J., in *Gadsby v. Warburton* (a), are in favour of the appellant's view. [*Erle, J.* This additional statement renders the same address more clear; my observation does not apply to such a case.]

*Byles*, Serjt., *contrà* was not heard.

TINDAL, C. J.—According to section 7 of the Registration Act, the notice is to be as in the form No. 5, in the schedule to the act, or to the like effect. I think that the present notice is *to the like effect*, and therefore sufficient.

Decision affirmed.

(a) *Ante*, 77.

1845.

**WOOD, Appellant, and OVERSEERS OF WILLESDEN,  
Respondents.**

Whether property is sufficiently described on the register, for the purpose of being identified, under sect. 40 of stat. 6 Vict. c. 18, is a question of fact for the decision of the revising barrister, and this court will not review his decision upon appeal.

**THIS** was an appeal from the decision of the revising barrister for the county of Middlesex.

**CASE.**

At a court duly holden before one of the revising barristers for the county of Middlesex, the name, place of abode and qualification of Henry Hall, as a voter in respect of property situate within the parish of Willesden, were described in the register for the said county in the following words, (that is to say,)

Christian Name of each Voter at full length.	Place of Abode.	Nature of Qualification.	Street, Lane, or other like Place, in this Parish where the Property is situate, or Name of the Property, or Name of the Tenant.
Hall, Henry.	The Grove, Neasdon, in this Parish.	House and land as Occupier.	Neasdon.

**Objection.**

This name was objected to by the appellant, and it was proved that the voter's place of abode was at the Grove, Neasdon, in the parish of Willesden, and that he occupied a house and land at Neasdon, for which he was bonâ fide liable to upwards of 50*l.* yearly rent; but it was contended by the appellant, first, that the voter's place of abode was not sufficiently described for the purpose of being indetified, for that the words in the second column, namely, "The Grove, Neasdon, in this parish," did not specify any particular parish. The revising barrister was of opinion that the words "in this parish" must mean "in the parish of Willesden," and he overruled the objection. In the register aforesaid the list of voters in respect of property situate within



the parish of Willesden is immediately preceded by a heading in the words "Parish of Willesden," and the same words, "Parish of Willesden," stand as a heading to every subsequent page in which voters in respect of property within that parish are described. It was also contended by the appellant, that the property in question was not sufficiently described for the purpose of being identified, and that the name either of the property or of the occupying tenant ought to have been given in the fourth column. It was shown that Neasdon was not a street, lane or like place, and that the property was not situate in any street, lane or like place, but was known by the name of "The Grove, Neasdon."

1845.

---

WOOD  
and  
OVERSEERS of  
WILLESDEN.

The revising barrister was of opinion that the words "house and land as occupier" in the third column, together with the word "Neasdon" in the fourth column, amounted to a sufficient description of the property, and he overruled the objection.

Barrister's  
opinion and  
decision.

If the Court of Common Pleas should be of opinion either that the words "in this parish" in the second column of the register do not necessarily mean "in the parish of Willesden," or that the property as above described was not sufficiently described for the purpose of being identified, then the name of the voter is to be expunged; but if the Court of Common Pleas should agree with the revising barrister on both these points, then the name is to be retained.

Question.

(The first objection was not argued.) *Cockburn, Kinglake*, Serjt., and *H. Atkinson* for the appellant, upon the second objection argued that the fourth column did not contain sufficient information within the fourth section of the statute 6 Vict. c. 18, and the form schedule (A.), No. 2. No street, lane or other like place is given as

1845.  
 WOOD  
 and  
 OVERSEERS of  
 WILLESDEN.

the situation of the property, nor its name, or that of the tenant occupying the property. The description is not so full as in *Eckersby v. Barker* (a); in that case it was expressly held that either the street, or lane and number, if any; the name of the property, if any; or of the occupying tenant, should be given.

*Arnold* for the respondent. The voter may have made no claim to have his name inserted on the list, and it is consistent with the case that he did not. He may have been on the old register, and that by the 6th sect. of 6 Vict. c. 18, together with the list of claimants, is to be the list of voters. [*Erle*, J. According to sect. 40 of 6 Vict. c. 18, the revising barrister is to be the judge of the sufficiency of description, and he has found it so. We might think this insufficiently described as a new claim without deciding against you in the present case.] These questions of fact are for the barrister, and the Court will not review his decision upon them. [*Tindal*, C. J. This does not appear to be a claim, and the prescribed form is only for claims.]

He was then stopped.

*Cockburn* in reply. Assuming this is to be treated as a case on the old register, the description is still insufficient. By the 2 Will. IV. c. 45, form No. 2, schedule (H.), the name of the property is required to be given, and that is here omitted. [*Erle*, J. The barrister is to use his judgment and correct mistakes. The sect. 42 of the statute 2 Will. IV. c. 45, and sect. 40 of the 6 Vict. c. 18, are bearing on the question.] The barrister has not acted upon them.

(a) *Ante*, p. 82.

TINDAL, C. J.—This question is as to the sufficiency of identity, and was purely one for the decision of the barrister. The objection does not point to the form of a claim made by the party nor to the overseers' list. In either such case, certain requisitions must be complied with, and the compliance is matter for our review and determination. But by sect. 40 of the stat. 6 Vict. c. 18, the barrister is empowered to correct mistakes in the lists, and to strike out insufficient qualifications. [His Lordship read part of the section (a).] The question of sufficiency of identity of the property is therefore referred to the judgment of the barrister; and if it is insufficient, and the particulars are supplied to him before he has completed the lists, he may insert them, but if the same are not proved to his satisfaction he may expunge the name. This case states that according to the revising barrister's opinion the description of the property was sufficient. We think his decision must be affirmed.

1845.

---

WOOD  
and  
OVERSEERS of  
WILLESDEN.

COLTMAN, J.—The stat. 6 Vict. c. 18, s. 40, has referred the sufficiency of description to the judgment and decision of the barrister. I think therefore that his decision must be held final and conclusive.

(a) And wherever the christian name, or the place of abode, or the nature of the qualification, or the local or other description of the property of any person who shall be included in any such list, and the name of the occupying tenant thereof, shall be wholly omitted, in any case where the same is by this act directed to be specified therein, or if any person whose name is included in any such list, or his place of abode, or the nature or description of his qualification, shall, in the judgment of the revising barrister, be insufficiently described for the purpose of being identified, such barrister shall expunge the name of every such person from such list, unless the matter or matters so omitted or insufficiently described be supplied to the satisfaction of such barrister before he shall have completed the revision of such list, in which case he shall then and there insert the name in such list.

1845.  


---

 Wood  
 and  
 Overseers of  
 WILLESDEN.

**MAULE, J.**—This is not a ground for appeal, the question is one of fact, and it would not be convenient for us, nor could the legislature have intended, that we should review decisions upon facts.

**ERLE, J.**—The name was upon the old register, and there is no requirement that the property should be named upon that; then the barrister has decided that the description is sufficient for the purpose of identity. Being a matter of fact for his decision, and he having decided it, we must affirm his decision.

Appeal dismissed, but without costs.



*BISHOP, Appellant, and HELPS, Respondent.*

Stamped duplicate notices of objection in proper form to the voter and overseers under sects. 100 and 101 of 6 Vict. c. 18, were produced, and evidence given before the revising barrister to show that the notices were so posted as to allow of their being delivered to the parties addressed in due course of post on the 25th August, (the time prescribed by sect. 7). Held, the evidence was conclusive to put the voter to prove his qualification, whether the notices were delivered or not. Held also, that the regulations as to notices sent by post to persons objected to by sect. 100, are made applicable by sect. 101 to notices of objection so sent to the overseers.

**THIS** was a consolidated appeal from the decision of the revising barrister for the eastern division of the county of Gloucester.

Henry Bishop objected to the name of John Cooke being retained upon the list of voters for the parish of Corse in the said county, under the following circumstances :—

**CASE.**

The objector, who resided at Cheltenham, produced duplicates of notices of objection in the proper form to the voter and overseers of the parish, bearing the Manchester post mark of the 24th of August, 1845, and proved that in

Held, the evidence was conclusive to put the voter to prove his qualification, whether the notices were delivered or not. Held also, that the regulations as to notices sent by post to persons objected to by sect. 100, are made applicable by sect. 101 to notices of objection so sent to the overseers.

the ordinary course of post the notices should have been delivered at the places to which they were respectively addressed at some time on the following day. The notices were not in fact delivered at those places respectively until the 27th of August, and had the post mark of the 27th at the places to which they were addressed impressed upon them.

1845.

BISHOP  
and  
HELPS.

It was objected, on the part of the voter, that the objector had not given the notice required by the statute 6 & 7 Vict. c. 18, s. 7, in due time, either to the voter or to the overseers.

Objection.

The revising barrister retained the name (and several others under like circumstances) upon the list.

Barrister's  
decision.

If the Court should be of opinion that both the notices were given in due time, as required by the statute, the names were to be expunged; but, if either of the notices was not so given, then the names were to be retained.

Question.

*Talfourd*, Serjt., argued the case for the appellants. The simple question raised in this case for the determination of the Court is, whether an objector who has sent notices by the post in compliance with all the requisites of sect. 100 of the stat. 6 Vict. c. 18, the notices having been posted in due time, has not done enough? It is submitted that he has, and that he is not to suffer for any error or neglect, if there be any, on the part of the persons employed by the post office. According to the probable view of the legislature in framing sect. 100 of this statute, the whole matter is much simplified and unnecessary expense avoided. The evidence is to consist of a stamped duplicate-notice, the counterpart of which shall have been "sent by the post, free of postage, directed to the person to whom the same shall be sent, at his place of abode, as described in the

1845.

---

BISHOP  
and  
HELPS.

list of voters," &c. The object was to defeat a practice that prevailed of inserting descriptions of places of abode so general in terms as to impose upon the objecting party great and unnecessary difficulty to serve the notices. A fictitious voter would still in many cases have the same unfair advantage, (which it was intended by sect. 100 to remedy,) wherever the general description had baffled the postman. The section in question uses the words "it shall be sufficient in every case," and then it prescribes the requisites of sufficiency, which have been here complied with. Numerous questions will be avoided by the adoption of that interpretation of the statute for which the appellant here contends.

In the case of *Allan v. Waterhouse* (a) this Court held that the duties of the postmaster in receiving, comparing and stamping duplicate notices of objections may be performed by the clerk or servant acting at the post office; and in that judgment it is said, "the postmaster may be personally unknown to the party who brings the document. What evidence is he to furnish himself with at the time of the delivery as to the identity of the postmaster? It would be dangerous and inconvenient if, after an objecting party has complied with the requisites of the statutes so far as he is able, evidence might be given that the postmaster was unable by illness to attend personally at the time, or was absent from some other unknown cause, and that the duties were performed by his clerk, &c. As there appears a substantial compliance in the present case, we hold that the objection to the notice fails." That decision, as also the judgment in *Cumming v. Jones* (b), shows that the Court are disposed

(a) *Ante*, p. 63; 13 Law J. Rep. (N. S.) C. P. 129.

(b) *Ante*, p. 135, reported as *Cumming v. Toms*, 14 Law J. (N. S.) C. P. 54.

to construe this statute with reference to public convenience. In the latter case it was held that the notice of objection need not be delivered to the postmaster by the person objecting, but it is sufficient if delivered by his servant or agent.

1845.

---

 BISHOP  
and  
HELPS.

In *Stocken v. Culling* (c) Parke, B., says, "if a party puts a notice of dishonour into the post, so that in due course of delivery it would arrive in time, he has done all that can be required of him, and it is no fault of his that delay occurs in the delivery." The rule is founded upon convenience and applies strongly to such cases as the present. Then as to the service of notice upon the overseers, sect. 101 provides, that "wherever by this act any notice is required to be given or sent to any person or persons whatsoever, or public officer, it shall be sufficient if such notice be sent by the post in the manner and subject to the regulations hereinbefore provided with respect to sending notices of objection by the post free of postage, or the postage thereof being first paid, addressed with a sufficient direction to the person or persons to whom the same ought to be given or sent, at his or their usual place of abode." The service of notice and the evidence of it, provided in sect. 100, is therefore made applicable to public officers by sect. 101; and although there may be more inconvenience in applying the same rule of construction in their cases, as is contended for under sect. 100, inasmuch as their duty is to put up the list of voters objected to, yet the preponderance of convenience is in favour of that construction.

*Byles*, Serjt., and *Grove* for the respondents. The post office is sanctioned as a means of conveying notices of objection by sect. 100 of the statute, and the ordinary

1845.

---

BISHOP  
and  
HELPS.

presumption will arise in favour of a party who has posted a letter that it is delivered in due course. The words referred to, "it shall be sufficient," are satisfied by that presumption; but the statute also uses the word "sent," and that cannot mean anything less than an actual transmission to the party to whom it is sent. In that sense a notice is not "*sent*" to a party by the mere delivery of it to the post office, which is the medium of transmission only. Subsequent portions of the section bear out this view; thus "the production by the party who posted such notice of such stamped duplicate shall be *evidence* of the notice having been given to the person at the place mentioned in such duplicate, &c." The words would have been "*conclusive evidence*," if that had been intended. The legislature were quite alive to the distinction, as may be seen by referring to sect. 79, where it is enacted "that the register of voters so made (&c.) shall be deemed and taken to be *conclusive evidence*, &c." It is submitted upon these grounds that the duplicate notice bearing the post office stamp, though made evidence, is only so *primâ facie*, and consequently may be met and rebutted by counter evidence showing that the notice was not received in fact within the proper time. The voter is not in fault and has no option as to the mode by which he shall receive notice; but the objector may elect to deliver the notice himself, or send it by the hands of an agent, or through the post office (which is a statutable agent). If he makes choice of an agent of one kind or the other, and by the laches of the agent the notice is too late or is not delivered at all, the consequence must be borne by the objector, who is the principal. As to the question of convenience or inconvenience, that argument avails the respondent, for if the construction of the appellant prevails, a voter who has never received notice,



through the neglect of the post office, will be disfranchised in his absence. But as to the notice to the overseers, the same provision does not occur in sect. 101, which makes a duplicate notice evidence in sect. 100.

*Cur. adv. vult.*

1845.

---

BISHOP  
and  
HELPS.

TINDAL, C. J.—In this case, which was an appeal from the decision of the revising barrister for the eastern division of the county of Gloucester, the question reserved by him for the opinion of the Court was, whether the notices of objection to the party who claimed the right to vote, and to the overseers, were given in due time. The notices were proper in point of form, and were duly delivered to the postmaster in such time as that by the ordinary course of the post they would have been delivered at the places to which they were respectively addressed some time in the day of the 25th of August; but, in point of fact, they were not delivered at such places until after that day; so that the question is limited to the sufficiency of the notices in point of time. Two questions were raised in the argument before us, one with respect to the notice to the party objected to, the other with respect to the notice to the overseers. We will first consider the case of the notice to the party objected to. The act 6 & 7 Vict. c. 18, by the 7th section, requires a notice of objection to be delivered on or before the 25th of August. The 100th section enacts, that, in case of notice to a person objected to, it shall be “sufficient if the notice shall be sent by the post, free of postage, directed to the person to whom it is sent at his place of abode, as described in the list of voters; and that where any person shall be desirous of sending such notice by the post, he shall deliver the same duly directed, open, and in duplicate, to the postmaster of a post

1845.

---

BISHOP  
and  
HELPS.

office where money orders are received or paid, within such hours as shall have been given notice of, and under such regulations, with respect to the registration of such letters, as shall be made by the postmaster-general." The act then directs the postmaster, on payment of the fee for registration, to compare the notice and duplicate, to forward one, and to return the other to the party bringing it. It then provides, that the production of a stamped duplicate by the party who posted such notice shall be evidence of the notice having been given to the person mentioned in the duplicate on the day on which such notice would by the ordinary course of post have been delivered to such place. It was argued, on the part of the respondent, that the true construction of the section was, that it should be sufficient if the notice was effectually sent, that is, sent and delivered; and there is no doubt that this would be sufficient; but it would, at the same time, be unnecessary to have this provision, which is a very special one, in order to make such a sending sufficient; for there is no doubt that any sending and delivery, by a servant or otherwise, by which the notice came to the voter, would be sufficient by the 7th section. It is, therefore, evident that some privilege is meant to be conferred by section 100 on a mode of dealing with the notice, which is so carefully provided for. The notice must be posted at a select description of office within certain hours; the postage must be paid; it must be registered, and the fee for registration must be paid; it must be delivered to the postmaster open, and in duplicate, compared, stamped, and the duplicate returned. And we think the meaning of the act is this, where all these conditions are complied with, such a sending shall be a sufficient substitute for what the 7th section required to be done, that is, a sufficient substi-

tute for giving the notice to the person objected to, or leaving it at his place of abode. It was probably considered that the public convenience would be promoted by the present provision, and that its advantages would greatly outweigh the inconvenience which in some few cases might possibly arise from it. Indeed, in the case of leaving notices at the place of abode, it may possibly happen that, without any fault of the party objected to, the notice may be lost or destroyed, or simply not delivered, through the negligence of a servant, and so never come to his knowledge; and yet there can be no doubt this would be a sufficient delivery. And perhaps such a miscarriage, under section 7, may be of as probable recurrence as the nondelivery of a notice posted according to section 100 of the act. If this is the true construction of that part of the section which provides what sending is sufficient, it follows that the objector has done all that the act requires him to do, to enable him to call on the voter to prove his right, whether the notice arrived or not, and whether it was prevented from arriving by insufficient description of the place of abode, or by default of the post office. So that, supposing, as it was insisted for the respondent, that the evidence of the stamped duplicate is not conclusive as to arrival, and was answered by proof of the contrary, as it was here, it makes no difference as to the right of the objector, as the fact so disproved is not material to his right. The stamp on the duplicate is clearly evidence of the posting on the 24th, and there was no contradiction as to that fact; so that whatever might be the consequence, if it had been shown in evidence that the notice was not really posted on the 24th, as the proof stood, all the facts constituting a sufficient sending were proved without contradiction. It was objected, secondly, with respect to

1845.

---

BISHOP  
and  
HELPS.

1845.

---

**BISHOP  
ad  
HELPS.**

the notice to the overseers, that such a notice was not within section 100, which applies only to notices to persons objected to, and that section 101 did not help it, as that section says nothing of a duplicate being evidence; so that, as there was no proof of notice to the overseers, except the stamped duplicate, no notice was in effect proved. But it appears to us, that the clause in section 101, which provides, "that whenever by this act notice is required to be given or sent to any person whatever, or public officer, it shall be sufficient if such notice shall be sent by the post in the manner and subject to the regulations hereinbefore provided with respect to sending notice of objection by post, with a sufficient direction, addressed to the person to whom the same ought to be sent at his usual place of abode," affords a sufficient answer to this objection. For it seems to us that this clause applies the provision in section 100 as to notices to persons objected to (including the provision which requires the notice to be delivered open and in duplicate to the postmaster, and that the postmaster shall stamp and return one part, and its necessary consequence, that such stamped duplicate shall be evidence of the time of posting and of delivery,) to all notices to overseers, directed to them at their usual places of abode; and as nothing appears upon the case stated, and no question was made respecting the address of the notice to the overseers, we think the notice to them falls within the same rule as the notice given to the party objected to. It appears, therefore, to us that both of the notices of objection were given in due time, and, consequently, that the decision of the revising barrister must be reversed.

Decision reversed.

1845.

RAWLINS, *Appellant*, and THE OVERSEERS OF WEST  
DERBY, *Respondents*.

THIS was a consolidated appeal from the decision of the revising barrister for the southern division of the county of Lancaster.

A notice of claim left at the house of an overseer on the 20th July, though that day happens on a Sunday, is a good notice under section 4 of the 6 Vict. c. 18. Held also that where a respondent appears, the notice of appeal under section 64 need not be proved.

CASE.

The overseers of the township of West Derby objected to the names of George Atkinson and of several other persons, set forth in a schedule, being retained in the list of claimants to vote in the said township. The barrister allowed the objection, subject to the opinion of the Court of Common Pleas.

All the said claims were delivered at the dwelling-house of one of the overseers of the said township of West Derby, in his absence, about nine o'clock in the evening on Sunday the 20th of July. The overseers, nevertheless, published such claims in the list of claimants, but inserted opposite to each name the word "objected," and at the revision of the said list contended that such service of the said claims respectively was insufficient and invalid, having been made on Sunday, and the following day being too late by law for the service of such notices, and that such claimants, therefore, are not entitled to have their names retained in the said list.

*Arnold* for the respondent objected to the appeal being heard. All the overseers of West Derby are respondents, but notice has been served on one only. He referred to sect. 64 of the stat. 6 Vict. c. 18. [*Tindal*, C. J. Under that section no notice of appeal need be proved at all, if the respondent appears.]

1845.

---

RAWLINS  
and  
OVERSEERS  
of  
WEST DERBY.

*Crompton* for the appellants then argued that the notice of claim may be well left at the house of the overseer on a Sunday. The question arises under sect. 4 of the Registration Act, by which persons are "to give or send to the overseers on or before the 20th day of July, &c., a notice in writing by them signed of their claim to vote." It is plain therefore that persons have the whole of the 20th in which to send in their claims, whether that day happens to be Sunday or any other day; if not, the statute would have made an express exception: it does so in several sections viz. the 5th, 8th, 12th, 13th, 14th, and several others. Unless the statute 29 Car. 2, c. 7, has affected the state of the common law in this respect, there is no reason why the act may not be done on a Sunday. It is not an exercise of work or labour of the person's ordinary calling, nor the service of any process mentioned in the act. In many cases the legislature directs notices to be posted on the church doors, no doubt with the view of their better coming to the knowledge of those to be affected by them as they pass into and out of church on the Lord's Day.

He cited *Comyns v. Boyer* (a), *M'Kelley's case* (b), *Alanson v. Brookbank* (c), *Walgrave v. Tailor* (d), *Reg. v. Middlesex JJ.* (e).

*Arnold* for the respondent. Sunday being in the present case the last day on which the notice of claim could be given, the overseer, if he only receives it on Sunday, had no time to look into it except on that day, therefore the effect of holding this to have been a good service of claim is to require the overseer to work on the Sunday. It is against the policy of the law to require

(a) Cro. Eliz. 485.

(b) 9 Rep. 66.

(c) Carth. 504.

(d) 1 Ld. Ray. 705.

(e) 12 L. J. (N. S.) M. C. 60.

the performance of this duty on the Lord's Day. This case resembles that of a party receiving notice of dishonour of a bill of exchange on a Sunday; he is in the same situation as to giving notice to prior parties on the bill as if he received it on the next day. Bayley on Bills (*f*).

1845

---

RAWLINS  
and  
OVERSEERS  
of  
WEST DERNY.

TINDAL, C. J.—The 4th section of the statute directs in plain language that the overseers shall require persons, who are desirous to have their names inserted on the register, to send notice thereof to the said overseers on or before the 20th day of July. The statute therefore gives the party the whole day of the 20th, during which he may send his notice, and makes no mention of that day being excepted when it happens to fall on a Sunday: why then should it not be obligatory? We must abide by the act as it is, and indeed the exceptions of Sunday contained in other clauses show that none was intended in this instance. Nor is the sending this notice of claim at all within the statute for the better observation of the Lord's Day, 29 Car. 2, c. 7. By the common law all contracts which are not in the ordinary calling of the contracting parties are held good and valid though made on a Sunday, and many other things, such as demands of possession and the like, may be done, which show that there is no reason for holding the service of the present notice of claim invalid. The argument drawn from the practice of not requiring notices of dishonour upon bills of exchange to be given on Sunday does not go far enough without showing that such notices would be bad if given on that day. I think that this decision should be reversed.

1845.  
RAWLINS  
and  
OVERSEERS  
of  
WEST DERBY.

MAULE, J.—By this act of parliament the claim must be made by notice served on or before the 20th day of July, and the overseers' list is to be prepared by the 31st. In this case the overseers have had the full time given them by the law for that purpose. The statute is clearly worded; but still, if a literal construction of it would compel parties to act *contra bonos mores*, or in contravention of the policy of the common law, that might be an objection to such a construction; I do not think that is the case here, for no statute or rule of law prohibits the doing an act of this nature on a Sunday. The practice referred to upon bills of exchange depends on the custom of merchants and special reasons. The statute of Car. 2 was passed to indulge persons of strong opinion with respect to the Christian sabbath, but except such things as are expressly prohibited therein, a man may do all lawful things on a Sunday, and indeed some things it may be obligatory upon him to do.

CRESSWELL, J.—We are asked to introduce an exception into this section of the statute; but it seems to me more reasonable to adhere to the section as we find it, and by so doing I do not see that any one is called upon to act contrary to the law of the land.

ERLE, J.—I am of the same opinion. To adopt the construction contended for by the respondent would be a violation of the express language of the act. The overseer may steer clear of the Sunday in the performance of his duties.

Decision reversed.



1845.

BISHOP, *Appellant*, and SMEDLEY, *Respondent*.

THIS was an appeal from the decision of the barrister appointed to revise the list of voters for the parish of St. James, Westminster.

James Bishop claimed to be registered as occupier of a house, No. 213, Piccadilly, in the parish of St. James, Westminster.

The revising barrister decided that the said James Bishop was not entitled to have his name inserted in the list of voters, in consequence of his not having been rated in respect of the premises which he occupied as aforesaid during the twelve months ending on the 31st of July in the present year, and of his not having paid, on or before the 20th of July, all the rates which were due in respect of such premises previously to the 6th of April preceding, subject, however, to the opinion of the Court of Common Pleas upon the following

## CASE.

Bishop had never been rated to the poor rate for the house which he occupied, the only name that appeared upon the rate book was that of the landlord. On the 20th of July there remained a sum of 3*l.* 2*s.* 6*d.* unpaid of rates due on the 6th of April last. Bishop's evidence in support of his claim was to the following effect:—  
 "On the 19th of June last I called on Mr. James Catchpole, one of the overseers, at his shop in Regent Street. I there delivered to him a notice of claim to be rated for the house I occupy. I asked Catchpole whether there were any rates due. He said he did not know. I then said, 'If there are, I am prepared to pay them.'

J. B. an occupier, not being rated, applied to the overseer under section 30 of the Reform Act, to know whether any rates were due, and being told by the overseer that he did not know, added, "If there are, I am prepared to pay them." The overseer said "I will see to it." No further inquiry was made and the matter dropped. Held, that this was no tender in compliance with the above section. *Semle*, per *Maule, J.* The tender need not be so strictly precise as to support a plea.

1845. Catchpole replied, 'I'll see to it.' I never made any further inquiry, and I never heard again upon the subject. I am sure that when I called upon Mr. Catchpole I had money in my pocket, because I remember having first gone home for a 10*l.* note. Nothing more than what I have stated passed between me and the overseer."

BISHOP  
and  
SMEDLEY.

Barrister's decision.

The revising barrister held that the effect of the indulgence given by the 30th section of the Reform Act to persons claiming to be rated could not put them in a better position than those persons were in who were actually rated, and that Bishop was bound to see that the rates due on the 6th of April, in respect of his premises, were paid on or before the 20th of July.

Question.

He also decided that there was not, according to Bishop's own evidence, sufficient proof in this case of such a tender of rates on the 19th of June as was required by the statute. If the Court of Common Pleas should be of opinion that the said decision was wrong, the name of the said appellant was to be inserted on the register.

*Arnold* for the appellant. Under the 30th section of the 2 Will. IV. c. 45, an occupier who is not rated may claim to be so, and upon such claiming and paying or *tendering* the amount of the rates due, &c., he shall be deemed to have been rated for the purposes of the act. The tender in this case was dispensed with, for the party was provided with the means and had the intention to pay. [*Tindal*, C. J. The matter was not merely *inter partes*; how can a tender, required by statute, be dispensed with? *Maule*, J. The claimant might have ascertained the amount of rate, it is a public thing. I do not say the tender need have been a strict legal tender,

but how can the overseer be expected to tell at any moment what is due upon every rate?] The party himself could not know, he is not rated and had no right to see the rate. He did all he could under such circumstances to comply with the requisition of the act. He said "I am prepared to pay what is due." *Bevans v. Rees* is like this case and the tender was held valid (a).

1845.

---

 BISHOP  
and  
SMEDLEY.

*Merewether* was stopped by the Court.

TINDAL, C. J.—This decision depends on the 30th section of the Reform Act. "An occupier may claim to be rated in respect of his occupation, and upon such claiming and actually paying or tendering the full amount of the rate or rates, if any, then due in respect of such premises, the overseers of the parish or township in which such premises are situate are required to put the name of such occupier on the rate for the time being; and in case such overseers shall neglect or refuse so to do, such occupier shall nevertheless for the purposes of the act be deemed to have been rated to the relief of the poor in respect of such premises," &c. Upon the facts it seems to me that there was no tender of the rates then due. The claimant said "if any rates were due, he was prepared to pay them." The overseer could not then tell if any were due, but promised to "see to it." The understanding seems to have been that the claimant should call again, which he never did, having previously left, *re infectâ*. I think the barrister's decision was right and must be affirmed.

MAULE, J.—I think also that there was no tender to satisfy the provision of the 30th section. I have already

(a) 5 M. & W. 309; 8 L. J. (N. S.) Exch.

1845.

BISHOP  
and  
SMEDLEY.

said that perhaps the tender need not be such under this statute as in legal strictness has been required to support a plea of tender; but I think that although the overseer did all that was reasonable, the voter did not, nor acted as if he was desirous to pay the rates. He leaves the overseer to find out what is due, and without further inquiry relies on that as an equivalent for a tender.

CRESSWELL and ERLE, JJ., concurred.

Decision affirmed, and with costs.

CROUCHER, *Appellant*, and BROWNE, *Respondent*.

By section 32 of the Reform Act it is provided, that no person elected or admitted as a burgess or freeman since 1st March, 1831, otherwise than in respect of birth or servitude, shall be entitled to vote as such: Held, that the freeman and liverymen of London are not within the proviso.

THIS was an appeal from the decision of the barrister appointed to revise the list of voters for the city of London.

J. H. Croucher objected to the name of one E. Browne being retained in the list of such of the freemen of London as are liverymen of the Company of Bakers. The revising barrister retained the name, subject to an appeal upon the following

#### CASE.

The respondent was admitted to the freedom of the Company of Bakers, and to the freedom of the city of London, by redemption or purchase, in the month of January, 1834, and to the livery of the said company in the month of March following; his qualification was in other respects perfect. On behalf of the appellant, it was contended, that by the 2 Will. 4, c. 45, s. 32, the

respondent was disqualified, inasmuch as having been admitted a freeman since the 1st of March, 1831, otherwise than in respect of birth or servitude, he was not entitled to vote *as such*. The revising barrister decided that the words "*as such*" in the said section were limited to persons who voted as burgesses or freemen; that the freemen and liverymen of London did not vote as freemen, but as freemen and liverymen; and therefore that a freeman and liveryman, who had been admitted a freeman by purchase, after the said 1st of March, 1831, was not disqualified by the disfranchising proviso of the said section.

1845.  
CROUCHER  
and  
BROWNE.  
Barrister's  
decision.

If the Court should be of opinion that the decision was wrong, the name of the respondent was to be expunged from the list of voters of the said company. Question.

*Kinglake*, Serjt., and *Welsby* for the appellant. By sect. 32 of the Reform Act, "Every person who would have been entitled to vote in the election of a member to serve in any future parliament for any city or borough (&c.), either as a burgess or freeman, or in the city of London as a freeman and liveryman, if this act had not been passed, shall be entitled to vote in such election, provided, &c." And in the latter part of the same section, among other provisoes, there appears the following: "Provided always that no person who shall have been elected, made or admitted a burgess or freeman since the 1st day of March, 1831, otherwise than in respect of birth or servitude, or who shall hereafter be elected, made or admitted a burgess or freeman, otherwise than in respect of birth or servitude, shall be entitled to vote *as such* in any such election for any city or borough as aforesaid, or to be so registered as aforesaid."

The question for this Court is as to the true con-

1845.

---

 CROUCHER  
and  
BROWNE.

struction of this provision. The other side will urge that the words "as such" apply only to burgesses and freemen, whereas this respondent claims to vote as a freeman and liveryman; but looking to the intention of the legislature in framing this section, that cannot be the true construction. It was desirable to prevent the constituencies of cities and boroughs, and indeed all constituencies, from being swamped with fictitious qualifications; hence the requisitions of residence in this section, and it cannot be said that the freemen of London are exempt from it. It is true that this respondent is a liveryman as well as a freeman, but the franchise is in respect of his freedom of the city only, and not because he belongs to a particular company; many liverymen are not freemen, and may never become so. They cited *Shepherd on Elections* (a) to show that although some freemen are required to pay scot and lot in order to qualify as voters, yet they vote as freemen.

The forms of oaths given by stat. 11 Geo. 1, c. 18, afford a conclusive argument that the freemen of London, though requiring other qualifications for the elective franchise, vote only as freemen. It is submitted, therefore, that the freemen of London *as such*, are within the proviso in question. [*Tindal*, C. J. By sect. 14 of the latter statute "no person shall be allowed to vote who has not been on the livery by the space of twelve calendar months before the election."] No doubt with the same object of preventing a creation of freemen for the purpose of a coming election. The stat. 3 Geo. 3, c. 15, has a similar enactment, and the case of *Williams v. Evans* (b) decided upon it is in point; Lord Kenyon there says, "The legislature in passing this act of parliament intended to prevent strangers, persons who did not belong

(a) Page 38.

(b) 8 T. R. 246.

to the corporation, coming down on the eve of an election to give their votes for members; and it certainly extends to corporators, whether called by the names of burgesses or freemen." [*Cresswell*, J. The cases bear no analogy. If this respondent ceased to be a liveryman, he ceased to be a voter; but under the statute referred to, the party might cease to pay scot and lot, and yet vote as a freeman. *Maule*, J. The very form of claim, schedule (K.), No. 2, is "as freemen of the city of London and liverymen of the several companies thereunder specified."]

1845.

---

CROUCHER  
and  
BROWNE.

*Gurney* and *Grove* for the respondent were not heard.

TINDAL, C. J.—The Reform Act in its 32d section cannot be read without discovering a clear distinction between freemen of other boroughs and those of the city of London. This distinction is marked by the use of the terms "burgess or freemen," in speaking of the former, and "freemen and liverymen" with respect to London. By coupling the words "freemen *and* liverymen," the legislature has made the right to vote to depend upon the conjunction of the two qualities in the same person. [His lordship read the first proviso of the 32d section] Why are we to extend the terms used in this disfranchising proviso beyond the sense they bear in previous parts of the act and section?

The distinction is kept up throughout the section, and in schedule (K.), No. 2, which has been referred to, the words freemen and liverymen are coupled in the form of claim there given, and in No. 3 also in the form of notice of objection to the claim.

For these reasons I think the judgment of the revising barrister is a sound one in deciding that the words "as

1845.

---

CROUCHER  
and  
BROWNE.

such" are used in the proviso of this section with reference to voters as burgesses or freemen only, and do not apply to freemen and liverymen of the city of London.

MAULE, J.—I have not felt any doubt upon this subject. It is true that the act of parliament intended to protect the old constituency from being swamped, and to preserve certain vested interests. The 32d section, therefore, prevents the exercise of the franchise when it is conferred only by the corporate body; but in the city of London the corporation alone cannot confer it. It must be done by the different companies respectively making liverymen; so that in London the danger from swamping a constituency on the eve of an election does not exist. The language of the legislature is most unequivocal, and evidently did not intend to interfere, by this proviso, with the city of London. The words freemen and liverymen are used in the act to designate voters of London, and to distinguish them from other voters. There is no obscurity that I can discover in any part of the section.

CRESSWELL, J.—In reserving the rights of persons entitled to vote for cities and boroughs, the section distinguishes between those who are burgesses or freemen, and those in the city of London who are freemen and liverymen. [He read the first proviso.] The language used is clear and precise, and it was quite clear of the voters as freemen and liverymen. The words "or to be so registered as aforesaid" create no difficulty, they merely mean that those who are not qualified to vote as freemen are not to be registered as such. I think the decision must be affirmed.



ERLE, J.—The freedom of London is distinguished by the 32d section from that of other cities and boroughs. Nothing can be more distinct than the terms used by the legislature, and there is no difficulty in applying the plain construction which the language bears.

1845.

CROUCHER  
and  
BROWNE.

Decision affirmed without costs (*a*).

(*a*) The Court said it was matter of law, and therefore not a case for costs. “*Ignorantia juris neminem excusat!*” *Quere.*

Cook, *Appellant*, and LUCKETT, *Respondent*.

THIS was an appeal from the decision of the barrister appointed to revise the list of voters for the city of London.

W. E. Lockett objected to the name of W. Cook being on the list of persons entitled to vote in the election of members for the city of London in respect of the occupation of a house, No. 4, Golden Lane, in the parish of St. Giles without, Cripplegate. The revising barrister expunged the name from the list.

The occupier of a house, No. 3, was rated for it, but by mistake as No. 4. Held, that he was *bonà fide* called upon to pay the rate within sect. 75 of 6 Vict. c. 18. Held also, that a payment of the rate by the landlord in pursuance of an agreement between him and the tenant in consideration of an increased rent, was a payment by the tenant.

#### CASE.

The qualification of the appellant was duly proved in respect of the occupation of a house, No. 3, Golden Lane, except as to the sufficiency of the rating. He was rated to all the poor rates, as the occupier of No. 4, Golden Lane. He held the house at an annual rent of 27*l.*, and had an express agreement with his landlord that the latter should pay all rates and taxes in respect of the premises. His landlord had called upon him to pay, and he had paid all the rent due in respect

1845.

---

Cook  
and  
LUCKETT

of the house; and the landlord had been called upon to pay, and had paid all the poor rates due in respect of the said house. It was contended on behalf of the said appellant that though the premises so occupied by him were inaccurately described in the said poor rate, yet that he was the person liable to be rated for such premises, and had (by his landlord, specially constituted by his agreement as his agent in that behalf,) been bonâ fide called upon to pay, and had bonâ fide paid all the rates due in respect of such premises, within the meaning of the 75th section of 6 Vict. c. 18, and, therefore, that he was to be considered as having been rated and paid all rates in respect of the said premises, notwithstanding the inaccurate description in the said rate of the said premises so occupied by him.

Barrister's decision.

The revising barrister decided that this was an inaccurate description within 6 Vict. c. 18, s. 75, but that the facts proved did not show that the appellant had been bonâ fide called upon to pay, and had bonâ fide paid the rates due in respect of such premises.

*Welsby* for the appellant. The question is as to whether the appellant had been called on to pay the rates pursuant to the 6 Vict. c. 18, s. 75. The latter part of the section recites doubts as to the effect of an inaccurate or insufficient description in rates, and enacts, that "where any person shall have occupied such premises, as in the said recited act (a) are mentioned, for twelve calendar months next previous to the last day of July in any year; and such person, being the person liable to be rated for such premises, shall have been bonâ fide called upon to pay in respect of such premises all rates made for the relief of the poor in such parish or

(a) The Reform Act.

township during the time of such his occupation so required as aforesaid; and such person shall have bonâ fide paid, on or before the 20th of July in such year, all sums of money which he shall have been called upon to pay as rates in respect of such premises for one year previously to the 6th day of April then next preceding, such person shall be considered as having been rated and paid all rates in respect of such premises within the meaning of the said recited act, and be entitled to be registered in respect of the same in any year, any misnomer or inaccurate or insufficient description in any rate of the person so occupying or of the premises occupied notwithstanding."

1845.

---

 Cook  
and  
LUCKETT.

This appellant has in legal effect been called upon to pay; he need not be asked for the money by the overseer personally. There is no doubt about the bona fides of the transaction; it has been found by the barrister that the rent had been paid to the landlord, and by agreement between him and the tenant the rates were to be paid by the landlord and was to be included in the rent. The landlord was therefore the agent of the tenant for the payment. The former had been called upon to pay the rates, and had in his turn called on the appellant to pay the rent, which by agreement included the rates. The point has been already decided in the cases of *Hughes v. Chatham* (a), and *Wright v. Stockport* (b).

*Grove* for the respondent. The statute contemplates an application in person. *Moss v. St. Michael, Lichfield* (c), shows that a payment without any demand of payment, where a person is omitted from the rate, will

(a) *Ante*, p. 35.(b) *Ante*, p. 21.(c) *Ante*, p. 116.

1845.

---

Cook  
and  
LUCKETT.

not suffice within the 75th section. [*Tindal*, C. J.—To insert the name *bonâ fide* in the rates is a sufficient calling upon. *Maule*, J.—Surely if a party goes and pays a rate, there is no necessity for him to be called upon, beyond the fact of rating him *bonâ fide*.] He cited *Cullen v. Morris* (a).

**TINDAL, C. J.**—There seems to have been an inaccuracy of description in the number of the house, which brought this case within section 75 of 6 Vict. c. 18, and the facts as stated by the barrister disclose that the tenant was rated to all the poor rates as the occupier, that he held the house at an annual rent of 27*l.*, and had an express agreement with his landlord that the latter should pay all the rates in respect of the premises. His landlord had called upon him to pay his rent, which had all been paid accordingly; and the landlord had been called upon to pay and had paid all the poor rates due in respect of the said house. Under these circumstances, I think that the tenant had been *bonâ fide* called upon to pay the rates and has paid them.

I see no necessity for a personal application; where a party is upon the rate no one else can be called upon to pay, and the person rated is liable to a distress if he does not. A payment by the authorized hand of another does not differ from one made by the hand of the party himself; for such a purpose *qui facit per alium facit per se*.

**MAULE, J.**—There was a *bonâ fide* calling upon to pay and a payment of this rate by the appellant within

(a) 2 Stark. 577.

this section, though I do not think that there was any necessity for having recourse to it in the present case.

The 27th section of the Reform Act confers the franchise on 10l. occupiers of houses who pay rates; and in order to identify the person who bears the burthen of payment, requires those to be rated who pay the rates. But it is immaterial whose hand conveys the money, because what a man is required to do, he need not do with his own hand, in such cases as making a payment or the like. It is enough that the money comes out of the funds of the party who is to make the payment. A gratuitous payment by an unauthorized person, as for instance by a candidate at an election, would be thus prevented by the requisition that the payment must be *bonâ fide*. The 6 Vict. c. 18, s. 75, intended to obviate doubts arising upon the Reform Act, so that the decisions which might have been doubtfully arrived at under section 27 of the latter, are facilitated in some cases by it. In my opinion, the very fact of putting a person's name on a rate is a calling upon that person to pay the rate. If so, this rating would have satisfied section 27. Without regard to the fact that the overseers did call on the landlord to pay the rates, I think this appellant was called upon to pay *bonâ fide*, and that he having paid the rates in fact is entitled to have his name inserted in the list of voters.

1845.

---

COOK  
and  
LUGRETT.

CRESSWELL, J.—I also think the statute of Vict. s. 75, may be dispensed with in deciding the case. There was a misdescription of the house in its number, but the appellant was in fact rated for the house No. 3, which he occupied. Being so rated, he paid the rates in the manner set forth in the case, and *Hughes v. Chatham Overseers* decides in favour of the sufficiency of such a

1845.

Cook  
and  
LUCKETT.

mode of payment. At all events section 75 makes the matter clear, if recourse is had to its remedial enactment. The overseer rates the party, and he acquiesces by paying through his agent, the landlord.

ERLE, J.—I agree that to rate a person with the intention that he should pay, is a sufficient calling upon him to pay, within the meaning of the 75th section.

Decision reversed.

FLOUNDERS, *Appellant*, and DONNER, *Respondent*.

The qualification for a borough was two houses occupied in succession. The number of the first house was omitted from the list of voters: Held, that an objection for such omission was good. *Semble*, that the insufficient description might have been amended by the barrister under section 40 of 6 & 7 Vict. c. 18.

THIS was a consolidated appeal from the decision of the barrister appointed to revise the list of voters for the borough of Scarborough.

CASE.

The appellant and others claimed to be inserted in the list of the said borough in respect of a successive occupation of houses. A list of names containing the names in question had been duly published by the overseers, and in that list the name and description of John Flounders, and of the situation of his property, were as follows :

Christian Name and Surname of each Claimant at full length.	Place of Abode.	Nature of Qualification.	Street, Lane, or other Place in this Parish (or Township), where the Property is situate, and Number of the House, if any.
Flounders, John.	15, Aberdeen Walk.	House.	Aberdeen Walk. 15, Aberdeen Walk.

The above description is an exact copy in all respects of the notice of claim sent in by the said John Flounders to the overseers. The place secondly mentioned as the situation of the house, namely, 15, Aberdeen Walk, is the situation of the house which he at present occupies; and the street or place where the said houses are stated to be situate is well known, and is not so extensive or populous but that any occupier of any premises in it may be found by reasonable inquiries. Both the houses constituting the qualification are and have always been numbered.

1845.

---

 FLOUNDERS  
and  
DONNER.

The claim of the said J. Flounders was opposed, on the ground that the number of the first house was not inserted in the list agreeably to the form prescribed by the 6 Vict. c. 18, schedule (B.), No. 3, nor in any claim sent to the overseers by him agreeably to the form No. 6 of the same schedule. Objection.

The barrister decided that J. Flounders was not entitled to be inserted in the list of voters for the said borough, on the ground that the statute required that the number of each house constituting the qualification should have been contained in the column describing the situation of the property. Barrister's decision.

If the Court should be of opinion that the number of the said house need not have been named by him, in describing the situation of the same in the notice of claim, then the name of the said J. Flounders was to be inserted in the said list of voters for the said borough, in the terms of his said notice, but not otherwise. Question.

*Wharton* for the appellant. The revising barrister had power to amend this technical defect by sect. 40 of 6 Vict. c. 18. [*Tindal*, C. J. Perhaps he was not asked, or the number of the house supplied to him, before he

1845.

FLOUNDERS  
and  
DONNER.

had completed the lists.] He seems to have thought it unnecessary to amend, as indeed it was. The notice of claim may be given in a certain form or *to the like effect*, and the overseer's list will accord with the notice. This case strongly resembles *Wood v. Willesden*, in which this Court determined last term that the sufficiency of description on the register was a question of fact for the barrister's final decision; and here he has decided that an occupier of premises in Aberdeen Walk may be found on reasonable inquiry. The act 6 Vict. c. 18, did not contemplate the depriving a voter of his franchise for mere inaccuracies or technical misdescriptions such as the present. The interpretation clause expressly provides that "no inaccuracy of person, place or thing, named or described in any schedule to the act annexed, or in any list or register of voters, or in any notice required by the act, shall in anywise prevent or abridge the operation of the act with respect to such person, place or thing, provided it shall be so denominated (&c.) as to be commonly understood."

He cited *Gadsby v. Warburton* (a), *Bartlett v. Gibbs* (b), *Hitchins v. Brown* (c).

*Bliss* for the respondent. The statute is express, and ought not to be evaded; it gives forms in schedule (B.), Nos. 3 and 6, thus: "Street, lane, or other like place in this parish (or township), and number of house [*if any*,] where the property is situated." The prior statute 2 Will. 4, c. 45, required less particularity, and the forms of notice of claim, &c. in schedule I. all omit the words "number of house, if any."

(a) 7 M. & G. 11; 14 L. J. (N. S.) C. P. 41; *ante*, 77.

(b) 13 L. J. C. P. (N. S.) 41; *ante*, 46.

(c) *Ante*, p. 209.



The present objection is to the overseer's list; and section 15 of 6 Vict. c. 18, does not cure a defect therein by virtue of the words "or to the like effect," as argued on the other side: those words apply to the form No. 6 of schedule (B.) only. The interpretation clause cannot aid this defect; it is neither a "misnomer" nor an "inaccurate description." It has been always considered necessary to give the number of the house where it has one. He cited *Dewhurst v. Fielden* (a), and *Eckersley v. Barker* (b).

1845.

---

FLOUNDERS  
and  
DOWNER.

*Wharton* replied.

TINDAL, C. J.—I think the barrister's decision is correct; that the list should contain the number of the house, where it has one. Then as we have already decided that houses held in succession must both be described on the list, the number of the one house being requisite, it follows that the number of the other is so likewise. There is perhaps greater necessity for the number being given in the case of a house which the party has left than of that which he still occupies; it is not so difficult to find out the latter. As to the power of amendment by the barrister, the Court should see that he was satisfied respecting the description before the revision of the lists was finished by him under section 40 of the act; but as the barrister has expunged the name, he appears to have been not satisfied. The interpretation clause, section 101, seems also not to help the present question; it cannot be said that the inaccurate description here was such as to be commonly understood.

(a) 14 L. J. (N. S.), C. P. 126; *ante*, p. 166.

(b) *Ibid.* 66; *ante*, p. 82.

1845.

MAULE, J. concurred (a).

FOUNDERS  
and  
DONNER.

CRESSWELL, J.—I think the list did not comply with the requisites of the statute, schedule (B.), No. 3. The number is required to be stated. The description given does not enable any person to identify the house; and the 40th section requires the barrister, under these circumstances, to expunge the name from the list, unless a sufficient description be supplied to him before he has completed the revision of it. He has expunged this name; and the inference is that no description was supplied to enable him to amend the omission.

ERLE, J.—The barrister in my opinion had the power to amend this insufficient description, if the material had been supplied to him at the proper time; but that point is not before us for decision now. As the case stands, I think the decision must be affirmed.

Decision affirmed.

(a) The learned judge only heard part of the argument.

PARIENTE, *Appellant*, and LUCKETT, *Respondent*.

Where an overseer has placed an occupier's name on the rate, but without the intention to rate him, the Court will look to the form of the rate alone in order to construe its sufficiency, and the intention of the overseers is immaterial.

THIS was an appeal from the decision of the revising barrister for the city of London.

W. E. Luckett objected to the name of Joshua Pariente being retained on the list of persons entitled to vote for the city of London in respect of the occupation of a "house, No. 18, Coleman street," in the parish of St. Stephen, Coleman street. The revising barrister expunged the name of the said J Pariente from the said

list, subject to an appeal to the Court of Common Pleas on the following

---

 1845.

PARIENTE  
and  
LUCKETT.

CASE.

The qualification of the appellant was duly proved in all respects, except as to the sufficiency of the rating. There were five poor-rates made in the said parish in the year ending the 31st of July, 1845. The first rate was made on the 17th of October, 1844; the second rate was made on the 17th of January, 1845; the third rate was made on the 8th of April, 1845. Thomas Haynes, the landlord of the said house, was rated, and paid all the rates in respect thereof. The appellant was not rated to the said October rate, nor did his name in any way appear thereon. On the 1st of January, 1845, a claim to be rated in respect of the said house was served, on behalf of the appellant, upon one of the overseers of the said parish, and at that time there was no rate due in respect of the said house. At the time the assessment to the said January rate was made out, the appellant was not rated thereto, nor did his name appear upon such last mentioned rate; but afterwards, and before the declaration at the foot of the said last mentioned rate was signed by the churchwardens and overseers, pursuant to the provisions of the 6 & 7 Will. 4, c. 96, the name of the appellant was inserted as an interlineation upon the said rate, between the name of the said T. Haynes and that of another party, who was rated for other premises, but without bracket or other connecting mark, and without any particular premises or amount of rating being carried out in the several columns referring to such particulars. The rate in this respect was in the following form:—

1845.	2	Thomas Haynes	House	18, Coleman Street	£. 67	£. 50	&c. &c.
PARIENTE and LUCKETT,		Joshua Pariente					
	3	A. B. (another party)					

The name of the appellant was inserted in a similar manner upon the said April rate, and the subsequent rates, but upon a separate line, not as an interlineation, and such last mentioned insertions were made at the time when the assessment was made out. One of the parochial officers stated that the name had been so placed upon the rate in consequence of the claim made by the appellant, but without any intention to rate for anything.

Barrister's  
decision.

Question.

The revising barrister decided that the appellant was not rated to the said January rate and the subsequent rates. If the Court should be of opinion that the said decision was wrong, the name of the appellant was to be inserted in the said list.

*Welsby*, for the appellant, referred to section 30 of the Reform Act. The case shows that the party has brought himself within that section as to the October rate. As to the other subsequent rates, his name was properly upon them, *Wright v. Town Clerk of Stockport* (a).

*Grove* contra. The name was inserted in consequence of a claim made to have it put in, but not with any intention on the part of the overseer to rate the party. [*Maule* J. The appellant thereby became liable to pay the rate.] Paying the rate will not suffice without a due rating of the occupier also.

(a) *Ante*, p. 21.

TINDAL, C. J.—The intention of the overseer in making out the written document, viz. the rate which contained the the appellant's name, must be set aside, in putting a construction upon the document itself. Looking at the form of the rate, and the figures 2 and 3, which stand in the margin, it appears to me that Thomas Haines is rated in respect of a house, 18, Coleman Street, and that Joshua Pariente is also rated in respect of the same premises.

1845.

---

PARIENTE  
and  
LUCKETT.

MAULE, J.—It is admitted that the appellant has brought himself within section 30 of the Reform Act as to the first rate. I do not see why the question as to the sufficiency of the subsequent rating should be embarrassed by the intention or non-intention of the overseer upon the subject. He may be quite indifferent about the effect of what he does, and yet the effect is to rate the occupier of the premises, whose name is properly put upon the rate by him.

CRESSWELL, J.—I agree in thinking that Pariente was rated; the very form of the rate indeed shows it.

ERLE, J.—I construe this written instrument as a rate on Pariente in respect of the house, No. 18, Coleman Street. He was rendered liable by it to pay the rate.

Decision reversed.

1845.

*LUCKETT, Appellant, and BRIGHT, Respondent.*

The premises used by the Anti-Corn-Law League were rented by J. B. and others, but the servants on the premises as well as the rent were paid from the funds of the association. The lessees and other members transacted the business of the association (and the lessees their own affairs also) on the premises. Held, that the lessees were occupiers as tenants within section 27 of the Reform Act.

THIS was an appeal from the decision of the revising barrister for the city of London.

W. E. Lockett objected to the name of John Bright being retained upon the list in respect of the occupation of a house, No. 67, Fleet Street. The revising barrister retained the name, subject to an appeal to the Court of Common Pleas.

## CASE.

The respondent, together with R. Cobden, G. Wilson, A. W. Paulton, R. R. Moore, and T. A. Taylor, were the joint lessees of the said house, 67, Fleet Street, under a demise for a term of three years from the 29th day of September, A. D. 1843, in consideration of the payment of a premium of 150*l.*, and of a yearly rent of 200*l.* The said lessees were the only persons appearing as contracting parties with the lessor, or liable to him for the rent of the said premises, and there was no mention in the lease of any other parties, or of the purposes for which the said premises were taken; but it appeared in evidence that the said premises were used for the purposes of a certain voluntary association of persons styling themselves "The National Anti-Corn-Law League," and that more than twenty other parties, members of the said association, subscribed various sums of money to a common fund for the purpose of carrying out the objects of the said association. The respondent and his co-lessees were also subscribers to the common fund. The rent of the premises was paid out of the common fund, as were also the various servants who had charge of the said premises; various

members of the said association transacted the business of the association upon the said premises; and the respondent and his co-lessees, when in London, were daily upon the premises, partly transacting the business of the association, and partly transacting their own affairs. It was contended, on the part of the appellant, that the respondent and his said co-lessees did not occupy the said house "*as tenants*" within the meaning of the 27th section of the 2 Will. 4, c. 45, or that if they did, the same was jointly occupied by them and the other members of the said association as tenants, and then that the clear yearly value of the said premises divided by the number of the said occupiers would not give a sum of "not less than 10*l.*" for each and every such occupier within the meaning of the 29th section of the said statute.

1845.

LUCKETT  
and  
BRIGHT.

The revising barrister decided that the respondent and his said co-lessees did occupy the said premises "*as tenants*," and that the same were not jointly occupied by them and the other members of the said association as tenants. If the Court should be of opinion that the said decision was wrong, the name of the said John Bright was to be expunged from the list.

Barrister's  
decision.

Question.

*Grove* for the appellant. The 27th section of the Reform Act does not include such a case as the present; the words are, "every male person, &c., who shall occupy within such city or borough as owner or *tenant* any house, &c." It cannot be said that the respondent occupied these premises *as tenant* within the meaning of the section. In order to occupy within the legal understanding of the expression, there must be a personal residence by the party or by his family; *Rex v. Ditcheat*(a), *Rex v. St. Nicholas, Rochester*(b).

(a) 9 B. &amp; C. 184.

(b) 3 L. J. (N. S.) M. C. 45.

1845.

*Welsby* for the respondent was not heard.

---

LUCKETT  
and  
BRIGHT.

TINDAL, C. J.—I do not see how we can differ from the revising barrister on the facts stated to us, or that he could have come to any other conclusion than he has. The lessees, of whom the respondent is one, appear to be the only contracting parties with the lessor, and the only persons liable to him for the rent of the premises. The lessees are stated to go to the premises whenever they wish, and to transact their own affairs there. I do not see how such an occupation can be held insufficient to satisfy the sections of the Reform Act. The decision must be affirmed.

MAULE, J.—We are asked if the barrister was wrong in his conclusion. He had evidence before him of the sufficiency of the value of the premises, and of the user of them by the respondent when he required it. I cannot say he was wrong in deciding as he has done.

CRESSWELL, J.—It does not appear from the case that other members of the association had any right to be on the premises without the consent of the respondent and his co-lessees; then the latter used the premises to conduct private and other business therein, and were the lessees, as found by the case. I think the barrister's decision was right.

ERLE, J.—I think the legal definition of "occupation" includes that found in the present case.

Decision affirmed.

---



LUCKETT, *Appellant*, and KNOWLES, *Respondent*.

1845.

THIS was an appeal from the decision of the revising barrister for the city of London.

W. E. Lockett objected to the name of P. L. Knowles being retained in the list for the city of London, in respect of property occupied within the parish of St. Margaret, Lothbury.

The revising barrister retained the name, subject to the following

## CASE.

The name of the respondent appeared upon the said list as follows :

Philip Lionel Knowles.	Greenwich.	Counting House.	1, Bank Chambers.
------------------------	------------	-----------------	-------------------

The only point in the case was as to the power of the revising barrister to alter the place of abode of the respondent as described in the said list.

It was proved that the respondent's place of abode was at Queen Square, Bloomsbury, and not at Greenwich, as described in the said list, and that both Greenwich and Queen Square were within seven miles of the city of London. The respondent required the revising barrister to alter the place of his abode ; but it was contended, on behalf of the appellant, that the revising barrister had no power to do so, inasmuch as the place of abode was an essential part of the description of the qualification of the respondent, which the revising barrister was not at liberty to change under the 40th section of the 6 Vict. c. 18.

The revising barrister decided that the place of abode was no part of the description of the qualification of the respondent, and that the erroneous statement of the said

"Queen Square" was stated on the city of London list instead of "Greenwich" as a place of abode: Held, an insufficient description, which was amendable by the barrister under section 40 of 6 Vict. c. 18.

Barrister's decision.

1845.

LUCKETT  
and  
KNOWLES.

place of abode was a mistake in the said list, which under the said section the revising barrister had power to correct, and he altered the place of abode accordingly.

Question.

If the Court should be of opinion that his decision was wrong, the name of the respondent is to be expunged from the said list.

*Grove* for the appellant. This is a case of false description, and might mislead a party who desired to object to a particular voter. The barrister should not amend in such circumstances under section 40 of the 6 Vict. c. 18. The Court approved of a refusal to do so in a nearly similar case. He cited *Bartlett v. Gibbs* (a), *Tudball v. Burgess* (b).

*Welsby* for the respondent was not heard.

TINDAL, C. J.—The amendment in this case under section 40 appears to me to be correct. By the terms of that section the barrister is to expunge the name of the voter from the list whenever the place of abode is wholly omitted, or is insufficiently described for the purpose of being identified; unless the matter or matters, so omitted, or insufficiently described, be supplied to the satisfaction of the barrister before he shall have completed the revision of the list containing the omission or insufficient description. If the matters are satisfactorily supplied, they are to be inserted in the list. I think this is a case of insufficient description under the latter part of the clause, which should not be narrowed, but libe-

(a) *Ante*, p. 46.

(b) *Ante*, p. 14.

rally construed by us. The decision must therefore be affirmed.

1845.

---

LUCKETT  
and  
KNOWLES.

MAULE, J.—The place of abode is no part of this qualification, and therefore the present case is not within that portion of section 40 which excludes evidence of any other qualification than that described in the list of voters or claim, and prohibits the barrister changing the description of qualification as it appears on the list. The barrister was not only right in doing as he did, but he had no power to expunge the name, except as an insufficient description for the purpose of identification. If this is such a case, it is also one for amendment, upon the insufficiency being supplied to the satisfaction of the barrister. I think it free from doubt, therefore, that he had the power to amend, and has properly exercised it.

CRESSWELL, J.—I am of the same opinion. Either the barrister had not the power to expunge at all, or he had that power, and with it the correlative power of amendment, as given by the 40th section, where the matter is supplied to his satisfaction before he has completed the list. In either view the name is rightly retained: but I think the amendment was the proper course.

ERLE, J.—I incline to think the barrister had the power of amendment in this case under the general words at the head of the 4th section, "that the revising barrister shall correct any mistake which shall be proved to him to have been made in any list." But without deciding that, I think this was a mistaken description, and as such, within the term "insufficient description" for the purpose of being identified.

Decision affirmed.

1845.

*BUSHELL, Appellant, and LUCKETT, Respondent.*

Until a new rate is allowed and published, the last valid and effectual rate continues to be the rate "for the time being" for the purpose of a claim to be rated under sect. 30 of the Reform Act.

**THIS** was an appeal from the decision of the revising barrister for the city of London.

W. E. Lockett objected to the name of William Bushell being retained on the list for the city of London, in respect of the occupation of a house No. 1, Still Alley, in the parish of St. Botolph, Bishopsgate. The revising barrister expunged the name from the said list, subject to a

**CASE.**

The qualification of the appellant was duly proved in all respects, except as to the sufficiency of the rating. The poor rates in this parish are made under a local act, 35 Geo. 3, c. lxi., by sect. 16 of which the rector, churchwardens, overseers of the poor and inhabitants of the parish are authorized and required to assemble and meet together in the vestry room of the said parish on the 25th June, 1795, and from time to time for ever thereafter, quarterly or oftener in every year, as occasion shall require, due notice having been given, &c.; and they, or the major part of them so assembled, shall, from time to time, make such rate or rates, assessment or assessments, for paying the interest due on certain annuities, and for and towards the relief of the poor of the said parish, and for other the purposes of this act, upon all and every person or persons who do or shall inhabit, as they the said rector, &c. at such meeting shall think necessary and proper to be rated and assessed.

There were four rates made in the said parish between the 31st of July, 1844, and the 31st of July, 1845. The first rate was made on the 28th of September, 1844, was allowed on the 4th of October following, and pub-

lished on the 6th. That rate was headed as follows :—  
 “We, the rector, being assembled and met together this 28th day of September, A.D. 1844, in the church of the said parish, due notice having been given of such meeting, do hereby make the following rate or assessment, being  $10\frac{1}{2}d.$  in the pound, upon all and every person or persons who do or shall inhabit,” &c. (following the words of the act,) *for thirteen weeks, from the 16th day of September to the 16th day of December, 1844.* The second rate was made on the 23rd of December, 1844, was allowed on the 3rd of January, 1845, and published on the 5th. This last mentioned rate had a similar heading to the rate first mentioned, being made “for thirteen weeks,” from the 16th day of December, 1844, to the 17th of March, 1845. The dates of the other two rates are not material; they were each headed in a similar manner, and purported to be made “for thirteen weeks respectively.” Each rate, though it purported to be made on a particular day, was not in fact made out as to the assessment of the different parties included therein till some days afterwards. The appellant was not rated to the first mentioned rate, nor did his name appear thereon; but at the end of the rate, after the allowance thereof, there was a long list of names, including that of the appellant, which list was headed thus, “The following are the names of persons who have made claim to be rated since the completion of the foregoing rate.” It was not proved that any claim to be rated was made by the appellant before the 27th of December, 1844, but on that day a notice of claim was served on his behalf on one of the overseers, the claim was in this form :—“To the overseers of the parish of St. Botolph, Bishopsgate. I hereby give you notice that I occupy a house at No. 1, Still Alley,

1845.

---

 BUSHELL  
 and  
 LUCKETT.

1845.

---

 BUSHELL  
and  
LUCKETT.

Bishopsgate Street, in your parish, and I claim to have my name inserted as occupier thereof in the rates made to the relief of the poor in your parish, pursuant to the 6 & 7 Will. 4, c. 96, and to the English Reform and Parliamentary Registration Acts. Dated this 24th day of May. (Signed) William Bushell, residing at No. 1, Still Alley." At the time the said claim was served, no rate was due in respect of the house in question, the rate having been paid by the landlord. The said claim was served at the same time with several others, and, at the time of such service, the overseers were told that the names of the parties so claiming ought to be put upon the September rate, in consequence whereof the names were so inserted in the before mentioned list, at the end of the September rate book. The appellant was duly rated to the rate made on the 23rd of December, 1844, and other subsequent rates. On behalf of the appellant it was contended, that at the time the said claim to be rated was so made as aforesaid, the September rate was the rate for the time being, within the meaning of the 30th section of the statute 2 Will. 4, c. 45, and, therefore, that the appellant was to be deemed to have been rated to that rate.

Barrister's decision.

The revising barrister decided that the September rate was not the rate for the time being at the time when the said claim to be rated was so made as aforesaid.

Question.

If the Court should be of opinion that the said decision was wrong, the name of the said appellant was to be reinserted in the said list of voters.

*Welsby* for the appellant. It will be argued on the other side, that the September rate had ceased to exist at the expiration of the thirteen weeks from its being made and prior therefore to the claim to be rated: so

that it would not be the rate "for the time being." But that is not so, for until a new rate is made there can be no rate at all for the time being except the one previously made. In this case the September rate was, in the true sense of the words as used in section 30 of the Reform Act, the rate "for the time being," from the time when it became a perfect rate by allowance and publication, till the December rate was also perfect by allowance, &c. on the 5th of January. The words of the 30th section are, that, upon claim being made, the overseers are to put the occupier's name "upon the rate for the time being." When the appellant claimed, there was no other rate but that made in September which could answer this description. Can it be said that the arrears of the rate, if any, could not have been collected at the time this claim was made? The rate was undoubtedly valid for that purpose, and therefore it was in fact and law the "rate for the time being."

1845.

---

BUSHELL  
and  
LUCKETT.

*Grove* for the respondent. The rate had expired. It was made for thirteen weeks from the 16th of September, and the quarter of the year for which it was made expired on the 16th of December. Those are the terms of the rate itself. [*Maule, J.* Can it expire until a new rate exist?] It may not, if the period of its existence is unfixed, as in ordinary cases. At all events the December rate was in being at the time of the claim, though it had not become enforceable for want of allowance and publication. It was nevertheless good for the purpose of a claim to be rated under the Reform Act, sect. 30.

*Welsby* was not heard in reply.

1845.

---

BUSHELL  
and  
LUCKETT.

TINDAL, C. J.—The September rate was the rate for the time being, until the new one had been published and allowed. If the overseers had enforced its collection, they must have justified under it, and the rate would have been valid for that purpose. The decision must be reversed.

MAULE, J.—The section of the Reform Act which has been referred to (sect. 30) assumes the existence of some rate at the time of the claim which is thereby authorized to be made. I think within that meaning, the September rate was the one then in being, and that the January rate was not so, though then made, until it was published.

CRESSWELL, J.—A rate, after its due allowance and publication, continues to be the rate for the time being, for the purpose of this claim, under sect. 30, until another rate is made, published and allowed.

ERLE, J.—I think the September rate was the one for the time being. There was no necessity under the local act to make a rate at every quarter's end. It would depend on the money being expended before a new rate would become necessary.

Decision reversed.





1845.

HOYLAND, *Appellant*, and BREMNER, *Respondent*.

THIS was a consolidated appeal from the decision of the revising barrister for the southern division of Lancashire.

CASE.

F. W. Hoyland and other persons were objected to, and their names were struck out from the list, subject to the opinion of the Court of Common Pleas.

It appeared in evidence that some time during the latter part of the year 1844, Mr. Charles Duffield, house-agent in Manchester, was employed by the claimants, who were all members or supporters of a certain political association, called "The Anti-Monopoly Association," to procure for them qualifications to vote for members of parliament for South Lancashire. Accordingly, Duffield, in the month of January last, applied to Mr. Worthington, a solicitor in Manchester, who was known by Duffield to have property on sale which would confer qualifications to vote for the said division of South Lancashire, to purchase such qualifications for Hoyland and the other claimants. He agreed with Duffield to sell certain freehold land and houses in the township of Newton, the property of a Mr. Whittaker, who had employed Worthington to dispose of this and other real estate. No contract in writing as to the purchase was entered into between any of the purchasers, or Duffield as their agent, and Whittaker. Worthington was employed by Duffield, as agent for the purchasers, to draw the conveyance on their behalf, and they did not personally consult him (Worthington) relative to the purchase. Different portions of the above freehold premises were conveyed to the claimants in fee

A purchase of property by persons, whose object was to multiply voices, but which object was unknown to the vendor, though it was acquiesced in by his solicitor, is not within the 7 & 8 Will. 3, c. 25.

1845

---

 HOYLAND  
and  
BREMNER.

by several separate deeds, in all nine; such claimants, where more than one purchaser, was included in the same conveyance, taking their respective shares as tenants in common. All the conveyances were duly executed before the 31st of January last, and the purchase money for each was handed over to Worthington, at the time of execution by Duffield, who had previously received it from the purchasers. The price given for each purchase appeared to be the fair marketable value of the property bought. The claimants have each received the rents of their respective portions or shares, which are of sufficient value to confer a vote. It did not appear that Whittaker knew of the object which the claimants had in view in making their purchases.

Barrister's  
opinion and  
decision.

The revising barrister was of opinion that such object was to acquire for themselves votes, for the purpose of multiplying voices for the election of members of parliament for the southern division of Lancashire, and for that purpose to split and divide their interest in the houses and lands so purchased by them; and he was further of opinion that such object was known and acquiesced in by the vendor's solicitor before the execution of the several conveyances above referred to. He, therefore, thought all conveyances void for the purpose of conferring such votes as aforesaid under the 7 & 8 Will. 3, c. 25.

*Cockburn*, for the appellant, argued that the case was not distinguishable from *Marshall v. Bowen* (a). The barrister expressly states that Whittaker, the grantor, had no knowledge (so far as anything appeared before him) of the claimant's object in making the purchase.

(a) *Ante*, p. 87.

*Arnold* contra. Notice to the agent is notice to the employer, and the former being aware of the purchaser's object the conveyance conferred no right to vote.

1845.

HOYLAND  
and  
BREMNER.

TINDAL, C. J.—There does not appear to have been any intention in the mind of the grantor, or even of the grantor's agent, to multiply voices. The case is therefore decided by *Marshall v. Brown*, according to which the barrister's decision in this case was erroneous.

Decision reversed (a).

(a) *Vide post*, p. 277.

ASHMORE, *Appellant*, and LEES, *Respondent*.

THIS was an appeal from the decision of the revising barrister for the Northern Division of Nottinghamshire.

#### CASE.

The name of the following person, who was inserted in the list of voters for the said county, was objected to, and the notices duly proved :—

Name of Voter.	Place of Abode.	Nature of Qualification.	Situation of Property.
Ashmore, James.	Shrewsbury Hospital, Sheffield.	Freehold interest in lands, buildings, corn rents in lieu of tithes.	Harworth and Styrrup.

The poor pensioners of a hospital (erected in pursuance of a will and regulated by a private act of parliament) were actually in receipt of 10s. per week, and certain coals and clothing, subject, however, by the terms of the said act of parliament, to be reduced to not less than 3s. 6d. per week by the trustees (having regard to the revenues of the hospital).

To the latter sum, as well as the coals and clothing, the poor pensioners were absolutely entitled. But the case found that the latter would not be sufficient to confer the franchise. Held, that they had no franchise.

1845.

---

**ASHMORE  
and  
LEES.**

James Ashmore was an inmate of the Shrewsbury Hospital, Sheffield, in the county of York, and claimed to be a voter for the Northern Division of Nottinghamshire, as being entitled as such inmate to an equitable life-estate or interest in lands and corn rents in lieu of tithes, arising from lands in the parish of Harworth and the adjoining township of Styrrup. The Shrewsbury Hospital was founded in pursuance of the will of Gilbert Earl of Shrewsbury, by Henry Duke of Norfolk, in or about the year 1673, when he erected the hospital at Sheffield, and made certain statutes and constitutions for its government, and in the year 1680, by indenture, the said duke, in pursuance of the will of the said Earl of Shrewsbury, conveyed certain lands and tenements to trustees for the purpose of maintaining the hospital and paying the inmates and pensioners according to the said constitutions. The hospital has been further regulated by certain private acts of parliament of the 11 Geo. 1 and 4 Geo. 4, confirming the foundation of the said hospital and the constitutions thereof, subject to certain charges and modifications duly introduced by and in pursuance of the said statutes. There are now twenty male inmates of the said hospital, of whom the said James Ashmore is one, and as such inmates they occupy and enjoy certain rooms and premises at Sheffield, in the county of York, but they are not in the occupation of any property in the county of Nottingham.

By the said constitutions it is (amongst other things) ordained, that in the said hospital there shall be for ever one governor and twenty poor persons, who shall give themselves to the service of God, and to pray for the prosperity of the noble family of the founder and his posterity, and that the said governor and every of them should enjoy such chambers, rooms, and accommo-

1845.

---

ASHMORE  
and  
LEES.

dations, from time to time for their lives, together with such stipend and all other allowances as are thereafter to every of them limited and appointed, every one of them well and honestly behaving himself according to the said statutes and constitutions. It is also provided by the said constitutions, that the said Duke of Norfolk and his heirs should from time to time nominate the governor, and certain persons who were to be assistants to the governor in the disposal of the revenues of the said hospital; and they were to receive the rents from the collector and lay them up in the treasury of the hospital, and one or more of them were to meet monthly with the governor in the hall, and pay the said inmates their allowances (as thereafter limited and appointed) out of the monies in the treasure house, (that is to say,) 2s. 6d. a week for each (which sum has been considerably increased under the powers given by the said acts of parliament); and also to every one in due season two wain loads of pit coals for one whole year's firing. And the assistants aforesaid were also from time to time to advise and assist the governor in buying such clothing in such manner as thereafter directed, that is to say, to every man a purple gown in seven years, for festival days, and a blue one every two years, to be clothed withal. There were also provisions as to the mode of filling up vacancies, and that the person chosen should be poor, honest, &c.; and if any person should be elected wanting such qualifications, or should afterwards marry, or in anywise misbehave himself, contrary to the said rules and constitutions, that then every such poor person should be expelled. It was also ordained, that the gowns belonging to the poor persons should on their death go to their successors, and that on the year when they had no gowns two shirts should be provided for

1845.

---

ASHMORE  
and  
LEES.

the men. It was also ordained, that what monies should at the end of every year remain over the necessary disbursements thereby authorized, should be put into the common treasury, and whenever it should be found that there remained in the treasury (all necessary charges being defrayed) above 100*l.*, that then all such surplus money exceeding 100*l.* should be equally distributed amongst the poor persons according to the proportion of their allowance.

It was further ordained, that the said duke and his heirs, anything therein contained to the contrary notwithstanding, did reserve a power to himself and his heirs for ever to alter, dispense with or repeal, at his or their wills or pleasures, any of the said statutes, constitutions and ordinances, and to add such new ones from time to time as he or they in their wisdom should think fit for the better government of the said hospital. Provided always, that neither the said duke nor his heirs should divert or diminish any part of the 200*l.* clear yearly revenue, which was the minimum amount originally appointed by the will of the said Earl of Shrewsbury for the maintenance of the said hospital, when he directed the same to be founded. The hospital, as it now exists, is governed by the said constitutions, as modified by the said private acts of parliament.

The material enactments of the said acts of parliament with reference to the present case are, that instead of having the surplus revenues distributed amongst the original number of pensioners, additional pensioners were directed to be chosen; and the trustees, under the direction of the duke, were empowered and directed from time to time to add as many more pensioners as the revenues of the hospital would allow (leaving a sufficient surplus for repairs and incidental expenses); and

the trustees were, under the direction of the duke, to pay to the pensioners such fixed stipends as they should think fit (having regard to the revenues of the said hospital), and to lessen, increase, vary, change and alter such weekly stipends as they should find requisite, so that the stipends should at no time be reduced below 3*s.* 6*d.* a week.

1845.

---

ASHMORE  
and  
LEES.

The hospital was never incorporated, and the estates from which its revenues arise have always been, and are now, vested in trustees, to hold the said estates in trust, to apply the revenues for the purpose of keeping the hospital in repair, and paying the pensioners their stipends and allowances of coals and clothing, and also paying the governor's salary and other incidental expenses of the establishment, according to the constitution as modified by the acts of parliament. The trustees have no beneficial interest in any part of the property. Upon a trustee dying, the Duke of Norfolk and his heirs, or, in his default, the surviving trustees, nominate a new trustee. The revenues of the hospital arise entirely from real property, which is partly in Yorkshire and partly in Nottinghamshire. The Yorkshire property forms nearly two-thirds of the whole in value, and the remaining property is in, or arises from, Harworth and Styrrup, as described in the list; such residue consists partly of lands belonging to the hospital, and partly of corn rents in lieu of tithe arising from or belonging to other parties. The revenues from the different estates of the hospital form one general fund, out of which the expenses of the establishment and the allowance of the pensioners are paid, without any distinction as to the Yorkshire or Nottinghamshire property. According to the ordinary usage of the hospital, the pensioners, when chosen, enjoy the benefits of

1845.

---

ASHMORE  
and  
LEES.

the institution as long as they live; no instance of dismissal appears to have been known. James Ashmore, the person named in the list, was duly appointed an inmate of the said hospital, and, as such inmate, he receives a fixed stipend of 10*s.* per week, and also the allowance of coals and clothing, according to the constitutions, but neither he, nor any pensioner, receives anything besides the said fixed weekly stipend and allowance. If this weekly sum and the average annual value of his allowance for coals and clothing are to be added together, and are to be considered as arising from the whole of the real estates of the hospital, and to be apportionable between the two counties of Yorkshire and Nottinghamshire, according to the relative values of the estates in each, the amount of the proportion to be so considered as arising from Nottinghamshire, would be of sufficient value to entitle him to be placed on the register, provided his interest were in other respects sufficient; but if the value of the coals and clothing is not to be taken into account, then the proportion of the money stipend alone would be insufficient. The original stipend of 2*s.* 6*d.* per week, and the subsequently fixed minimum of 3*s.* 6*d.* per week, would be quite insufficient in any case; and if the land and corn rents in Nottinghamshire are not to be added together, in estimating the total value of the Nottinghamshire property as described in the list, the value would in no case be sufficient. On the part of the objector it was contended before the revising barrister,—first, that James Ashmore had not a life interest in the emoluments he enjoyed by virtue of his appointment as an in-pensioner of the hospital; secondly, that if he had a life interest in such emoluments, it was not proved that he had any legal or equitable estate in lands or tenements in the county of



Nottingham, as the whole real estates were in two different counties, and James Ashmore was not entitled to require payment of his stipend or allowances, or any part of them, out of the Nottinghamshire property in particular, but that this was a matter in the discretion of the trustees; thirdly, that even if he had an equitable estate in the Nottinghamshire property, yet, as that property consisted partly of lands, and partly of corn rents arising from lands not belonging to the hospital, these two different descriptions of property could not be joined to make up the requisite value for the franchise, each of them being simply insufficient for the purpose; fourthly, that the right to receive, as an inmate of the hospital, the said weekly stipend, and the said allowances of coals and clothing, (according to the said constitutions and acts of parliament,) did not constitute a sufficient equitable estate or interest in the real property, out of the rents and profits of which such allowances were made, to entitle James Ashmore to be placed on the register; and that, at all events, the value of the allowances for coals and clothing could not be taken into account to make up the requisite value.

The revising barrister decided in favour of the objector upon the second and fourth grounds, and expunged the names from the register, subject to the present case. The constitutions, and the several acts of parliament relating to the hospital, are to be read or referred to as part of the case, if necessary.

The revising barrister having disallowed the first and third objections, and no appeal being made from that decision by the respondent, in whose favour he decided the second and fourth objections, the Court held that the points raised by the first and third objections could not be argued.

1845.

---

 ASHMORE  
and  
LEES.

1845.

ASHMORE  
and  
LEE.

The second objection being given up in argument by the counsel for the respondents, the argument on that objection is omitted.

In discussing the fourth objection, the question was mooted, whether the value of the gowns or any part thereof could be taken into account in estimating the interest of the poor men, since they only had the use of those gowns, but no property in them. But as the decision of the Court had no reference to this question, the argument thereon is omitted.

*Mellor* for the appellant. The revising barrister seems to have yielded a good deal to the argument that the trustees had an arbitrary discretion to raise or lessen the value of the allowances; but in truth this does not appear to be the case, for we find that in the last act (a) passed on the subject, that out of the surplus of the rents the trustees shall allow stipends to these poor men according to the circumstances of the case and the exigencies of the times, with power to lessen, increase and alter such stipends, so that they never be reduced below the amount of 3s. 6d. per week. The discretion of the trustees then is restrained by many circumstances, by the interference of the duke, the price of supplies, &c. Nor can they exercise such discretion except under control of Chancery. As the value of the property increased, additional persons were nominated and additional stipends given, to make up for changes in the value of money. It is well known, that if I give an estate to a man till I go to Westminster, though it be probable that I shall go there to-morrow, yet he has an estate for life defeasible by the event of my going to

(a) An act to amend 11 Geo. 1.

Westminster. So here, these men have an estate for life in their present interest out of these lands, which it is probable they will continue to possess till some great change in the value of money or provisions takes place, such as, for instance, might perhaps be effected by a change in the Corn Laws. He cited *Davis v. Waddington* (a).

1845

---

 ASHMORE  
and  
LEES.

*Byles*, Serjt., *contra*. Looking to the provisions of this act, it appears that the voter has no right to anything beyond 3*s.* 6*d.* per week, with the addition perhaps of the value of the coals and gowns, which, however, as is found by the case, will not raise the yearly amount to the requisite sum. Though the men now receive 10*s.* per week; all beyond 3*s.* 6*d.* is a mere gratuity, without any right on their part to enforce it. There are two ways in which the amount may be altered. First, power is given to the Duke of Norfolk and his heirs to alter at their will and pleasure, so that 200*l.* should be the clear yearly revenue. And, secondly, power is given to trustees, by direction of the duke, to alter the stipend, provided that not less than 3*s.* 6*d.* be allowed each man per week. [*Maule*, J. Is there a clause enabling them to increase the number of recipients?] Yes, there is such a clause in the act of 10 Geo. 3. [*Maule*, J. It may be that between the time of the decision of the revising barrister, and that of the present discussion, the allowance has been reduced by the trustees to 3*s.* 6*d.* Suppose a great measure passed for providing food for the hungry, might not the trustees lessen the stipends?] Assuredly: and their discretion is not confined to the exigencies of the times. They might take in more people.

(a) *Ante*, p. 120.

1845.

---

ASHMORE  
and  
LEES.

*Mellor* in reply. The question entirely depends upon the amount of discretion left in the trustees. I submit it is not an arbitrary discretion, but one that is to be regulated according to the exigencies of the times and the revenues of the hospital; and that these recipients had a life interest in the estates to the amount of their present stipends, till those stipends shall be legally altered.

TINDAL, C. J.—The question depends upon the fact whether the claimants are entitled legally or equitably to more than 3*s.* 6*d.* per week; because it appears that if they are not entitled to more than that sum, even taking into account the value of the allowances in coals and gowns, the proportion of the stipend referable to the county of Nottingham will not be sufficient to give them votes. Now looking at the act, it is impossible to say that they have any right to more than 3*s.* 6*d.* per week. At the original institution of the charity the weekly stipend was 2*s.* 6*d.*; it was then increased to 3*s.* 6*d.*; and subsequently from time to time, by dividing the surplus, to 10*s.* weekly. But the private act of parliament regulates the discretion of the trustees; and coupling that with the power, and indeed the discretion, given them from time to time to increase the number of pensioners, it is clear they are not entitled to more than 3*s.* 6*d.* per week.

COLTMAN, J.—It is not sufficient that a party should have been in the receipt of a sum of the requisite amount. It is necessary that he should have a fixed right, and vested interest to that amount. Now part of this stipend is liable to be taken away at any time, so as to

reduce the proportion in Nottinghamshire to an insufficient amount.

---

 1845.

ASHMORE  
and  
LEES.

MAULE, J.—I think the decision of the revising barrister was right, on the ground that the claimants had no legal or equitable estate of sufficient value. It is found that they had not, unless they had a right or interest in a payment beyond 3*s.* 6*d.* per week, such as would constitute a legal or equitable estate. I think they had no such right or interest.

ERLE, J.—Whatever may be the nature of the equitable estate of these parties, the value of it is not sufficient. All they are entitled to is 3*s.* 6*d.* per week. Any larger stipend is subject to the discretion of the trustees, who might increase the number of pensioners, leaving always to each person a stipend of 3*s.* 6*d.* per week.

Appeal dismissed without costs.

ALEXANDER, *Appellant*, and NEWMAN, *Respondent*.

THIS was a consolidated appeal from the decision of the revising barrister for the West Riding of the county of York.

#### CASE.

Joseph Bottomley and thirty-four other persons claimed to have their names inserted in the register of voters as the several owners, each respectively, of one undivided

A conveyance being made both on the part of vendor and vendees for the sole object of multiplying votes, but *bond fide* in pursuance of a contract of sale, where the purchase-money was really paid,

and possession of the land really taken and kept, and there being no secret trust or reservation in favour of the seller, nor any stipulation as to the mode in which the elective franchise should be used, is not void within the stat. 7 & 8 Will. 3, c. 25.

1845.

ALEXANDER  
and  
NEWMAN.

thirty-fifth part of freehold land and buildings at Lockwood, in the said riding. The facts of the case were as follows, and for convenience were stated as applying to one only, though applicable to each of the thirty-five claimants :—Joseph Bottomley being desirous of obtaining a qualification to vote in the election of members for the West Riding, some time in the month of January, 1845, called upon one T. R., the agent of a political association in the town of Huddersfield, and requested him to obtain a vote for him the said J. Bottomley.

J. Bottomley wished to obtain a qualification as cheaply as he could, but did not care about the nature or situation of the property, provided it would confer the right of voting, and did not involve any outlay of money beyond what would give the qualification, and at the same time secure the ordinary rate of interest. J. Bottomley's motive in applying to the agent was not however for the investment of money in land or buildings, but only to acquire the right of voting. Some time in the same month of January, Messrs. C., being wealthy manufacturers in the neighbourhood of Huddersfield, authorized the said T. R. to sell for them certain lands and cottages, their property, for the sum of 1,400*l.*; the only object of the said Messrs. C. in so authorizing the said T. R. to act for them was to increase the number of voters for members to serve in parliament for the said riding; they were not in want of money and would not sell any portion of their real estate below its fair and reasonable value. T. R. was not the attorney generally employed either by Messrs. C. or J. Bottomley, but, as agent of the beforementioned association, he had previously caused advertisements to be placed in the public papers inviting parties either to sell or to purchase small freeholds for the purpose of qualifying themselves for

the said riding, and referring to himself as such agent. In consequence of such authority from the said Messrs. C., and of such instructions from J. Bottomley and many other parties similarly disposed, the said T. R. arranged the purchase and sale of the said lands and cottages to the said J. Bottomley and thirty-four other persons as tenants in common for the sum of 1,400*l*.

1845.

---

ALEXANDER  
and  
NEWMAN.

A deed conveying the said lands and cottages was accordingly prepared by the said T. R., and was duly executed by the said J. Bottomley on the 22nd of January last, on which occasion the said J. Bottomley paid his portion of the purchase money, viz. 40*l*., to the said T. R., for and on behalf of Messrs. C., together with 1*l*. towards T. R.'s bill of costs. On the same day a lease of the land and cottages in question was executed by the said J. Bottomley and the thirty-four other tenants in common to the said vendors, Messrs. C., for the period of fifteen years, at the annual rent of 70*l*., which rent has since been duly paid. The land and cottages are within a very short distance of Messrs. C.'s mill, and were before and at the time of the purchase, and still are, in the occupation of persons employed at their said mill. The said J. Bottomley has never seen the property in question; and stipulated, when he applied to the said T. R. on the subject, that he, the said J. Bottomley, was to have no trouble in the matter, but should have 40*s*. per annum for his 40*l*. and secure the right of voting. The conveyance was complete and bonâ fide, and the purchase money really paid by the said J. Bottomley and the several other purchasers; and there was no secret trust or reservation in favour of the sellers, nor any stipulation as to the mode in which the elective franchise should be exercised by the said thirty-five purchasers or any of them; nor had any of them any

1845.

---

ALEXANDER  
and  
NEWMAN.

communication with Messrs. C. save through their common solicitor, T. R. The said Messrs. C. and the thirty-five purchasers entertained the same political opinion; and though there was no immediate concert between them, the avowed and only object of the transaction on both sides was to multiply voices in the election of members of parliament for the said riding. Upon these facts, the claim of J. Bottomley to have his name inserted in the list of voters was opposed, on the ground that the case came within the stat. 7 & 8 Will. 3, c. 25, commonly called the Splitting Act, as being a conveyance made in order to multiply voices or to split and divide the interest in houses or land among several persons, to enable them to vote at elections of members to serve in parliament, and therefore void and of none effect.

Barrister's  
decision.

The revising barrister decided that the statute did not apply to conveyances made under the circumstances disclosed in this case; that no conveyance of an estate for an adequate consideration made *bonâ fide*, without reservation, ratified according to law, and accompanied by payment of the purchase-money on the one hand, and possession of the property or receipt of the rents, as in this case, on the other, could afterwards be nullified by an inquiry into the motives which may have actuated the contracting parties before or at the time of the transaction; and that the said J. Bottomley and the said thirty-four other claimants were entitled to have their names retained on the list.

*Kinglake*, Serjt., for the appellant. By the 7th section of 7 & 8 Will. 3, c. 25, it is enacted, that all conveyances of any messuages, lands, tenements or hereditaments in any county, city, borough, town corporate, port or place, in order to multiply voices, or to split and



1845.

---

ALEXANDER  
and  
NEWMAN.

divide the interest in any houses or lands among several persons, to enable them to vote at elections of members to serve in parliament, are hereby declared to be void and of none effect, and that no more than one single voice shall be admitted for one and the same house or tenement. From the foregoing section it is clearly the intention of the legislature that a division of an estate, made for the express purpose of conferring the franchise upon many instead of upon one, should not be effectual for such a purpose. The distinction intended to be taken is, perhaps, that this was a *bonâ fide* parting with the property, and that the statute above referred to aimed only at frauds and secret trusts, with the object of passing a vote by the conveyance, but no property in the land conveyed. Looking, however, to the state of the law previous to this statute, such a limit cannot be assigned to the legislature's intention.

He cited *Elgin's case* (a) and *Onslow v. Bailiff of Haslemere* (b). The law then, before this statute, was, that to attempt to split votes by fraudulent conveyances rendered the conveyances void, unless they were founded on good consideration. So that the act effected nothing according to the construction to be contended for by the respondent. But the statute of 10 Anne, c. 23, supports the view suggested. And the subsequent statute 53 Geo. 3, c. 49, still further carries out the principle of the statute of Will. 3. It is submitted therefore that a conveyance is void when the main and paramount object of it is to split votes.

*Martin* for the respondent. The present case is one of purchase of property *bonâ fide*, and with the view of retaining it; but at the same time with a desire on the

(a) 3 Ludw. 378.

(b) 1 Peck. 350.

1845.

---

ALEXANDER  
and  
NEWMAN.

part of the purchaser to acquire a right to vote. How can such a conveyance and such an object be illegal and improper? The view contemplated by the legislature in passing the stat. of Will. 3 clearly was, that an owner of property should not be allowed to convey his property to trustees, with secret reservations, merely for the purpose of giving extra voices for election purposes. The stat. 53 Geo. 3, c. 49, is *in pari materiá*, and applied the provisions in like cases to devisors, which form of conveyance was not included in the statute of Will. 3. It would be monstrous to apply the construction urged on the other side to cases where the full value of the estate is given and received. There can be no occasionality where the transfer is real. The statute of 10 Anne, c. 23, is conclusive in favour of the respondent's argument. It enacted, that conveyances *fraudulently* made to qualify any person to vote, (subject to conditions to defeat the same,) should be discharged of such conveyances, &c. There is nothing fraudulent in the present case; and it is only against such conveyances as are fraudulently made that either the statute of Will. 3 or that of the 10 Anne is directed.

*Kinglake*, Serjt., was heard in reply.

*Cur. adv. vult.*

TINDAL. C. J.—This appeal against the decision of the revising barrister for the West Riding of the county of York raises the distinct question, whether a conveyance of land to a numerous body of purchasers, as tenants in common, is void under the 3rd section of the statute 7 & 8 Will. 3, c. 25, such conveyance being made, both on the part of the vendor and the vendees,

for the avowed and only object of multiplying voices in the election of members to serve in parliament, but at the same time being a bonâ fide conveyance made upon a contract of sale, where the purchase money was really paid and possession of the land really taken and kept under the conveyance, and where there was no secret trust or reservation in favour of the seller, nor any stipulation as to the mode in which the elective franchise should be exercised. The question is undoubtedly one of considerable importance, not only as it involves a general principle of election law, but as it applies to a large number of the cases reserved for our determination. It has been argued before us, both upon the present and upon another of the reserved cases, and we are of opinion, upon the proper construction of the statute above referred to, taking into consideration at the same time the statute subsequently passed upon the same subject-matter, that the conveyance in question was not a void conveyance, and that the several persons claiming to vote under it were entitled to have their names retained on the list of voters for the West Riding of the county of York. Even if the statute 7 and 8 Will. 3, c. 25, were the only statute passed upon the subject, and that statute were to be construed strictly by its very letter, we think its provision could not be held to extend to the case of any conveyance made upon a really bonâ fide contract for the sale and purchase of land; but that the statute was intended to apply to fictitious conveyances, to conveyances which had nothing more than the form and appearance of a conveyance, which consisted of the parchment and seal only, the parties thereto having privately agreed and intended that no interest should actually pass thereby. The first observation that arises upon the statute of

1845.

---

 ALEXANDER  
and  
NEWMAN.

1845.

---

ALEXANDER  
and  
NEWMAN.

Will. 3, as to the provision now under discussion, is, that the section is declaratory only of the common law. The first branch of that section does, indeed, create a new law. It is thereby enacted that no person shall have a vote at elections by reason of any trust estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of the same estate, but that the mortgagee or cestui que trust in possession shall vote for the same estate. But the second branch of the section, which is that now under consideration, is framed very differently; and by this latter branch, "all conveyances in order to multiply voices, and to split and divide the interest in any houses or lands amongst several persons, to enable them to vote, are thereby declared to be void and of none effect." This marked distinction between the two parts of the section proves incontestably that the latter part was intended only to declare the law as it stood, giving to such law the greater weight and sanction of a legislative declaration. The first question therefore is, what conveyances, made in order to multiply voices at elections, would be void at common law? The right of voting for knights of the shire did by the common law, as regulated by the two statutes 8 and 10 Hen. 6, belong "to such people resident in each shire, whereof every one had frank tenement within the same county to the value of 40s. by the year at least above all charges," and there was no restriction or prohibition by the common law against any man purchasing a freehold within the county of sufficient amount to qualify him to vote; nor on the other hand, against any man selling the same to one or to any number of purchasers, although the object of the seller and purchaser might be that the purchaser might acquire a vote, and consequently that the number of

voters should be thereby increased. By the common law, therefore, no conveyance really and honestly made for the purpose of carrying such contract into effect was void. But from the earliest times a conveyance, however perfect in point of form, being such in form only, and intended by the secret agreement or understanding between the parties never to have any real effect as a conveyance, was always held to be void, whatever the secret object and purpose of the parties in making such conveyance might be. The old text writers lay it down as a maxim, that "the law abhors covin; and, therefore, every covinous act shall be void;" and it is upon that principle unquestionably that a conveyance made in order or for the purpose of giving a qualification to vote at an election, or for any other purpose, if made with a secret intention and design that it should appear to the world as a conveyance, but as between the parties themselves should pass no interest and have no effect, would be fraudulent and void at common law. Lord Somers (and it is impossible to name an authority of greater weight on a subject of the nature of the present) is express to this point; and the observations made by him on the trial of the case of *Onslow v. The Bailiff of Haslemere*, for misconduct as a returning officer, on which occasion it was proved that many of the voters claimed under conveyances of very minute and insignificant parts of burgage lands, which had been lately made, and which were fraudulently contrived to make votes against an election, lays it down thus: "This case should caution persons having rights to elect against making votes by splitting burgage tenures by such fraudulent conveyances; all such conveyances as are not real, and made *bonâ fide* upon good consideration, being

1845.

---

ALEXANDER  
and  
NEWMAN.

1845.

---

ALEXANDER  
and  
NEWMAN.

in such case held to be void by the common law (a).” He then draws a very marked distinction between conveyances made to give qualifications where they are real and honest, and where they are fraudulent and fictitious, considering the latter only void at common law; and as this trial took place only about fifteen years before the passing of the statute of Will. 3, the language of Lord Somers affords strong evidence of how the common law stood at the time of passing the act. Again, the very language of the statute of William seems to point to the necessary distinction, that real and bonâ fide conveyances were not intended to be abolished, although the motive or purpose of the parties might be that of multiplying voices at elections, but such conveyances only, made for that purpose, as were pretended and fictitious. The statute says, all conveyances in order to multiply voices are declared to be void. The statute names the conveyances only; it makes no reference whatever to any contract for sale upon which a real conveyance was grounded, nor professes to deal in any manner with the estate or interest in the land which was affected by such contract of sale, nor provides for the reversion of the land, which passed into the possession of the purchaser under the contract of sale, nor for the repayment of the purchase money to the purchaser, all which provisions might reasonably be expected, if a conveyance upon a real bonâ fide contract of sale, and not a fictitious conveyance only, was intended to be avoided on account of the motive upon which it was entered into. And this is the more striking, as in the very same section provision is made as to the estate of trustees and mortgagees, so that the mind of the legislature must have been awakened to the distinction be-

(a) See Lord Somers's Tracts, vol. viii. p. 275.

1845.

---

ALEXANDER  
and  
NEWMAN.

tween a pretended conveyance which conveyed no estate, and one which was the completion of a real contract between seller and purchaser. According to the distinction laid down by Lord Thurlow, "if the *jus disponendi* remains in any other person, it is in vain that the parchment conveys the right to the grantee, for the real use of the estate remains in another." And if the words of the statute do not in their strict and necessary construction compel us to hold a conveyance made for the completion of a *bonâ fide* contract of sale to be void, upon the ground that the object and purpose was to multiply voices at an election, there is no general principle upon which these words ought to be extended. The object of increasing the number of freeholders at a county election, is not an object in itself against law, or morality, or sound policy. There is nothing injurious to the community in one man selling and another buying land for the direct purpose of giving or acquiring such qualification. The object to be effected is neither *malum in se*, nor *malum prohibitum*; on the contrary, the increasing the number of persons enjoying the elective franchise has been held by many to be beneficial to the constitution, and certainly appears to have been the leading object of the legislature in passing the late act "for amending the representation of the people of England and Wales." What ground, therefore, can exist for extending to a real and honest proceeding the words of the statute, which may be fully satisfied by giving them the force of avoiding a fictitious conveyance only? It is further to be observed, that the holding the statute of William to extend to a conveyance made upon a real sale, would be productive of much inconvenience and injury to all claiming under the purchasers. The supposed object and purpose which the sale intended to

1845.

---

ALEXANDER  
and  
NEWMAN.

effect cannot be discovered upon the face of the conveyance, but is altogether concealed in the breast of the parties themselves; so that by means of the larger construction of the statute, contended for on the part of the appellant, at any future time and between other parties than those to the original conveyance, this secret motive for making the conveyance, if brought to light by accident or otherwise, might destroy the title to the estate in whosoever hands it might be. The same rule of law must apply, whether the purchasers are many or few; perhaps even a conveyance of part of the seller's land to one single person, with the object above mentioned, must be held to be void; so that, upon such construction of the act, a man of large landed estate could not sell any part of it *bonâ fide* for a full consideration in money to two different purchasers; or, perhaps, to one only, if the object of such sale was to give the purchaser a vote for the county; for the creation of two additional votes, perhaps of one only, would be equally within the principle, though not in an equal degree, a multiplication of voices at an election, and a splitting and dividing the interest in houses or lands amongst several persons. The holding, therefore, the literal construction of the words of the statute of William to make such *bonâ fide* conveyances absolutely void, would very much fetter the full and free enjoyment of landed property, and create insecurity in titles to estates. Upon these various grounds, and for these considerations, we think the sounder construction of the statute of William, taken by itself, is, that by the conveyances made in order to multiply voices, which are thereby declared to be void, are intended such conveyances only as at the time of the passing of the act would have been held to be void by the common law;



that is, conveyances meant by the parties not to transfer any real interest in the land, but made for the purpose of multiplying voices at elections, and for that purpose only. And as to the observation made in the course of the argument, that if already void by common law there was no necessity for avoiding them by the statute, it may be a sufficient answer, that it was thought useful when such baneful practices as those described by Lord Somers, in the passage before cited, were in daily practice, to promulgate this doctrine of the common law to sheriffs and other officers upon whom the duty of conducting an election was cast, and to give it the additional weight and solemnity of a legislative declaration. If, however, any doubt exists on the construction of the statute of Will. 3, when considered by itself, such doubt will be removed when the subsequent statutes made upon the same subject, and to effectuate more fully the same object, are taken into consideration. The next statute in order of time, is that of the 10 Anne, c. 23. That statute, it is to be observed, is not so wide in its operation as the statute of William, for whilst the earlier statute, by its general terms, extends to all elections where the right of voting depended on the ownership of lands, whether in counties or boroughs, the statute of Anne is confined exclusively to the multiplying of votes upon the election of knights of the shire. This statute is intituled "An Act for the more effectual preventing Fraudulent Conveyances in order to multiply Votes for electing Knights of the Shire to serve in Parliament;" the very title of the act leading to the inference, that it is directed not against all conveyances for that purpose but against fraudulent conveyances only. The act then begins by reciting in terms the 7th section of 7 & 8 Will. 3, upon which this question arises; and it then

1845.

---

ALEXANDER  
and  
NEWMAN.

1845.  

---

ALEXANDER  
and  
NEWMAN.

further recites that many fraudulent practices have been used of late to create and multiply votes to the great injury, amongst others, of those persons who have just rights to elect. The recital, therefore, as well as the title, equally points out the distinction between the creation of votes by fraudulent and fictitious means, and the making of real votes, the latter of which could never be considered to fall within the language of the recital, to be "an injury to those persons who have just rights to elect." The first section goes on to enact, "that all estates and conveyances whatsoever made to any persons, in any fraudulent and collusive manner, on purpose to qualify them to give their votes at such elections, (subject nevertheless to conditions or agreements to defeat or determine such estate, or to reconvey the same,) shall be deemed and taken against the persons who executed the same as free and absolute, and be holden and enjoyed by all such persons to whom such conveyance shall be made as aforesaid freely and absolutely exonerated and discharged from all manner of trusts, conditions, clauses of re-entry, &c. or other defeasances whatsoever." And the act then goes on to provide, that all securities given for the performance of such trusts, &c. shall be void, and it imposes a penalty of 40*l.* on every person executing such conveyances, or voting under them. And we consider this latter statute to be a legislative exposition of the clause of the statute of Will. 3, therein set forth, that the avoiding of conveyances made in order to multiply voices at elections was meant by the original statute to be confined to such conveyances only as were fraudulent and collusive, to conveyances which are such in form only, but never intended to pass the property, or such as were accompanied by some secret trust or reservation for the benefit

of the grantors, and not to extend to a bonâ fide conveyance made in completion of an actual contract of sale and purchase of land. For the statute of Anne is expressly limited to fraudulent conveyances; and it cannot be intended that the statute of Anne, passed to render the former statute of William more efficacious, should be, as to county elections, less comprehensive in its provisions than the former statute, or that the former should comprise within it the avoidance of a bonâ fide conveyance, when the latter is restricted to fraudulent conveyances only. The statute of Anne, it is to be observed, meets the evil intended to be put down by a very different provision from that contained in the statute of William; for whereas the statute of William is contented with simply declaring the fraudulent conveyance void, thus leaving the grantor and grantee as if the conveyance had never been made, the statute of Anne, on the contrary, provides that the fraudulent conveyance made for the purpose of giving a qualification shall be deemed and taken against those persons who executed the same as free and absolute, discharged from any manner of trust or condition for the benefit of the grantor; and at the same time prohibits the grantee from voting under colour of the grant, by making him liable to a penalty of 40*l.* to the common informer, the legislature probably thinking that the practice of fraudulent and collusive freeholds would be more effectually checked by making such conveyances good against the grantor, and by frustrating the object of the grantee. But this provision never could, in reason or sense, be meant to apply to a conveyance on a real sale of the land where the seller has already received the purchase money, and has always intended the grant to be good against himself. And further, the oath di-

1845.

---

ALEXANDER  
and  
NEWMAN.

1845.  
ALEXANDER  
and  
NEWMAN.

rected by the statute of Anne appears quite conclusive as to the distinction between fraudulent and real conveyances made for the purpose of creating a vote, namely, "you shall swear such freehold estate hath not been made or granted to you *fraudulently*, on purpose to qualify you to give your vote." The next statute which touches this question is the 18 Geo. 2, c. 18, s. 5, and the enactment contained therein confirms the distinction to which we have often recurred. That statute enacts, that "no person shall vote in respect or in right of any freehold estate, which was made or granted to him fraudulently, on purpose to qualify him to give his vote," thereby, as in the statute of Anne, prohibiting the voting, not in every case where the estate is conveyed to him for the object of enabling him to vote, but in such cases only where it is fraudulently made to him for that purpose, that is, where the grantee of the estate, although he appears on the face of the conveyance to take under it, does in reality, as between the parties themselves, take nothing, or if it is accompanied with a secret trust for the benefit of the grantor. In the course of one of the arguments before us some stress was laid by the counsel, contending for the illegality of the vote, upon the statute of 53 Geo. 3, c. 49. That statute was passed to explain and amend the statute of Will. 3, and after reciting that doubts had been entertained whether devises by will, made in such cases and for such purposes as those mentioned in the former statute, were within the true intent and meaning of the act, the statute then enacts "that all devises by will made in such cases and for such purposes as by the act of William are described, are and shall be taken to be conveyances within the true intent and meaning of the act, as if the same had been therein specially mentioned." And the

argument was, that it was singular the 53 Geo. 3 should refer to the statute of William and not to the statute of Anne, unless the statute of William was in full operation independently of the statute of Anne. But to this it may be answered, that the reference may well have been made to the statute of William, because the intention of the legislature was, that the devise which gave a fraudulent qualification should be altogether void ; whereas, if reference had been made to the statute of Anne, the devise should be good against the heirs of the devisor. The whole object of the statute is, in fact, to insert the word "devises" in the statute of William, leaving devises to be dealt with in the same manner and by the same rule of law as applied to conveyances. If the devise was fraudulent, if it were never intended to pass the land by means of a secret compact with the devisor in his lifetime, that the devisee would not take, or that he would reconvey, then the statute of Geo. 3 would bring the devise exactly into the same predicament as a fraudulent conveyance under the statute of William. But, on the other hand, if the will even openly expressed that a father devised to his son an estate of 40s. a year, intending merely to qualify him to vote for the county, yet if the son entered into possession, and held the land without any secret understanding or reservation on his part, the devise would then be in the same predicament as a conveyance for the same purpose, and would be good. Therefore, upon the whole state of the question, considering the statute of William by itself, and with reference also to the latter acts, we think a conveyance made in completion of a bonâ fide contract of sale, where the money passes from the buyer to the seller and the possession also from the seller to the buyer, and where there is no secret reservation or

1845.

---

ALEXANDER  
and  
NEWMAN.

1845.

ALEXANDER  
and  
NEWMAN.

trust whatever for the benefit of the seller, is not avoided by reason of the object or motive of the purchaser and seller being that of multiplying voices at an election; and, as the revising barrister has by his finding brought the present case within that description, we think his decision, by which he retains the names of the purchasers on the list of voters, was right, and ought to be affirmed.

Decision affirmed (a).

(a) The above case decided also those of *Riley v. Crossley*, *Beswick v. Ashworth*, *Beswick v. Aked*, *Thornley v. Aspland*, and *Rawlins v. Bremner*. These cases differed in some immaterial particulars, but were held to be within the principle promulged in the elaborate judgment of *Alexander v. Newman*, *supra*.

COOGAN, *Appellant*, and LUCKETT, *Respondent*.

Where no question of law is stated for the opinion of the Court, but the case merely discloses the facts on which the barrister has decided, the Court will not interfere.

By "clear yearly value" is meant the sum which a tenant would pay for rent, deducting the amount of burdens which he would fairly be called upon to pay.

THIS was an appeal from the decision of the revising barrister for the city of London.

CASE.

L. Luckett objected to the name of H. Coogan being retained on the list of voters for the city of London in respect of the occupation of a "house, 4, Redcross Passage, in the parish of St. Giles-without-Cripplegate."

The qualification of the appellant was duly proved in all respects, except as to the value of the house so occupied by him.

The rent paid by the appellant for the house was 4s. 6d. per week, amounting to 12l. 7s. per annum.

The landlord paid all the rates and taxes assessed upon the said house.

The landlord of the said house was also the owner and lessor of other houses in the same parish, which were let at a weekly letting, and he compounded for

his poor rates for all such houses, and also for the said house so occupied by the appellant; and the said landlord was assessed in the poor rate book, in respect of the said house, at 5*l.* per annum.

1845.

---

 COOGAN  
and  
LUCKETT.

It was not shown that there was any local act authorizing such composition, but it was assumed to have been made under 59 Geo. 3, c. 12, s. 19.

The rates commonly known as tenants' rates payable in this parish amounted to 5*s.* 11*d.* in the pound per annum, viz. poor rates, 3*s.*; consolidated rate, 1*s.* 4*d.*; police rate, 7*d.*; and church rate, 1*s.*

It was proved that the said house, if the same were rated to a tenant, would be assessed at the whole rateable value of 8*l.* per annum, upon which assessment the tenant's rates would amount to 2*l.* 7*s.* 4*d.* per annum.

It was contended, on behalf of the appellant, that no other rates or taxes, except the poor rate and window tax, ought to be deducted from the amount of rent actually paid, in order to ascertain what was the "clear yearly value" of the said house, within the meaning of the 27th section of the 2 Will. 4, c. 45; and secondly, that if all the said tenant's rates were to be deducted, yet, that such deduction should be made only for the amount for which the premises were assessed to the landlord (viz. 5*l.*), and not upon the rent actually paid by the tenant; and that no greater amount than that which the landlord was actually called upon to pay could legally be deducted. Objection.

The revising barrister was of opinion that the "*clear yearly value*" of the premises must be taken to mean the rent at which the said premises might reasonably be expected to let from year to year, free of all tenant's rates and taxes at least, that is to say, the rent which the landlord would in such case receive; but inasmuch Barrister's opinion and decision.

1845.

---

 COOGAN  
and  
LUCKETT.

as there was no evidence before the revising barrister to enable him to ascertain what the said house in question would so let for under such circumstances, he considered that the proper principle of ascertaining the "clear yearly value" of the house in question was to deduct from the rent actually paid by the appellant (*viz.* 12*l.* 7*s.*) the amount of "tenant's rates and taxes," calculated upon the rateable value of the said house if assessed to a tenant (*viz.* 2*l.* 7*s.* 4*d.*), and therefore that the said house was not of the "clear yearly value" of 10*l.*, and expunged the name of the said H. Coogan from the said list, subject to an appeal to the Court of Common Pleas.

Question.

If the Court should be of opinion that the said decision was wrong, and that either of the principles of calculating the value contended for on behalf of the appellant was correct, the name of the appellant was to be re-inserted in the said list of voters.

*Welsby* for the appellant. According to the principle established in the *Woodstock case* (a), in which it was held that the words of 2 & 3 Will. 4, c. 45, s. 27, "the clear yearly value of not less than 10*l.*," mean a yearly value of 10*l.* to the landlord, exclusive of the amount of parochial rates assessed upon the tenant, the proper criterion of the annual value is the sum received as rent by the landlord, exclusive of the rates paid by him. [*Cresswell*, J. May not these words, "clear yearly value" apply as well to the tenant? What is the value of the tenement to him exclusive of the burdens? *Maule*, J. This case states a number of facts on which the revising barrister appears to have founded his decision, and we ought not to be called upon to say whether

(a) *Fal. & Fitz.* 450.



that decision was right or not. The value of the house is not necessarily determined by the amount of rent paid.

1845.

---

COOGEAN  
and  
LUCKETT.

*Grove*, for the respondent, was not called upon.

TINDAL, C. J.—The question here is entirely one of facts; no proposition of law is submitted to us for consideration; and there is nothing disclosed in this case which can lead us to say that the barrister's decision is otherwise than correct.

MAULE, J.—The question of value was a question of fact, on which the barrister has pronounced his decision, with which we are not competent to interfere.

CRESSWELL, J., concurred.

ERLE, J.—I think the proper mode of interpreting the expression "clear yearly value," is to estimate the sum for which the tenement would fairly let, deducting from it what a tenant would fairly have to pay. There is no reason for departing from the principle which has been constantly acted upon in settlement cases.

Decision affirmed.



1845.

NEWTON, *Appellant*, and HARGREAVES, *Respondent*.

The Court will not inquire whether the circumstances attending a conveyance or grant amount to fraud, as it is a fact for the revising barrister to determine.

A conveyance by a father to his son, in consideration of natural love and affection, in order to qualify him to vote, is not void within sect. 7 of 7 & 8 Will. 3, c. 25.

THIS was an appeal from the decisions of the revising barrister for the Northern Division of the county of Chester.

#### CASE.

James Newton duly objected to the following names being retained on the list of voters, in respect of the qualifications following :—

Christian and Surname of each Voter.	Place of Abode.	Nature of Qualification.	Street, Lane, &c. or if the Qualification consist of a Rent-charge, then Name of Owner.
Robert Hargreaves	46, Ardwick Green, Manchester	Freehold land	Holt's Farm
Samuel Hargreaves	46, Ardwick Green, Manchester	Freehold land	Holt's Farm

The facts were as follows : R. H. Hargreaves, the father of the two claimants, being seised in fee of a messuage and farm at Mobberley, in the county of Chester, and also of certain hereditaments in the southern division of the county of Lancaster, in the month of December, 1844, proposed to the two claimants to execute a deed of gift in their favour of sufficient freehold property in both those counties to entitle them to be registered as voters for the said counties ; and, accordingly, a deed was executed on the 30th of January, 1845, by which the said R. H. Hargreaves, in consideration of natural love and affection, conveyed to the two claimants and their assigns, for the life of the said grantor, two closes of land, part of Holt's farm, in Mobberley aforesaid, and a life estate in the said hereditaments and premises in South Lancashire. The deed was pre-

pared by the solicitor of the said R. H. Hargreaves, the grantor, and was received by one of the claimants from such solicitor a few days before it was produced at the court aforesaid.

1845.

---

NEWTON  
and  
HARGREAVES.

Before the execution of the said conveyance the said claimants had, by the permission of the said grantor, depastured their horses on the said close in Mobberley, and had continued to do so subsequent to the date of the said deed; and the grantor had also continued to depasture his cattle thereon since the date of the said conveyance, and had never paid or agreed to pay rent to his sons for the said closes. The yearly value of the said closes in Mobberley aforesaid was 36*l*. The said conveyance was made by the grantor to the two claimants principally for the purpose of entitling them to be registered as voters aforesaid, but with a view also of making a provision for them.

It was objected that this transaction was fraudulent, being for the mere purpose of creating votes, and that the conveyance came within the operation of the statute 7 & 8 Will. 3, c. 25, s. 7, and was void. Objection.

The barrister decided that the names of the said claimants should be retained upon the register, and upon the points in question, first, that the said deed was not void on the ground of fraud; and secondly, that it was not void under the statute 7 & 8 Will. 3, c. 25, s. 7. Barrister's decision.

If the court should be of opinion that the said decision was wrong on either point, then the names of the said Robert Hargreaves and Samuel Hargreaves were to be expunged from the register. If otherwise, the appeal was to be dismissed. Question.

*Cockburn* for the appellant.

1845.

*Granger* for the respondent.

---

NEWTON  
and  
HARDEWAYS.

The argument will sufficiently appear from the judgment, which was delivered by

TINDAL, C. J.—In this case the revising barrister appears to have reserved two points for the opinion of this Court; first, whether the circumstances attending the execution of a conveyance are such as to show it to be void, as founded on fraud in fact; and secondly, whether it is void as being made for the purpose of multiplying voices at elections, in violation of 7 & 8 Will. 3, c. 25. As to the first point, fraud does not appear on the grant itself, and the revising barrister has found the absence of it for himself; and we see nothing which calls upon us to differ from his decision. As to the second point, that the statute has been violated, I think the case falls directly within the rule laid down by us in the case of *Alexander* and *Newman* (a), and that the decision of the revising barrister was therefore correct upon both of the questions that were raised before him.

Decision affirmed.

(a) *Supra*.

---

JUDSON, *Appellant*, and LUCKETT, *Respondent*.

“Part of house” **THIS** was an appeal from the decision of the revising barrister for the city of London.

is a good description, on the overseer's lists of the claimant's qualification, within sect. 27 of Reform Act.

Where the landlord is rated for the house, and the occupier's name stands on the rate next in order, but unconnected with a bracket, and with no description of property carried out against it: Held sufficient rating of the occupier. *Quære*, whether a revising barrister could, by sect. 40 of the Registration Act, amend an insufficient description?

## CASE.

1845.

JUDSON  
and  
LUCKETT.

W. S. Lockett duly objected to the name of H. W. Judson being retained on the list of persons entitled to vote in the election of members for the city of London in respect of the following qualification :

Henry William Judson.	22, Cannon Street.	Part of House.	22, Cannon Street.
-----------------------	--------------------	----------------	--------------------

It was contended on behalf of the respondent, that the qualification of the appellant, as stated in the said list, was insufficient in law to entitle him to vote, and therefore that the revising barrister must expunge the name of the appellant, under the 40th section of the 6 Vict. c. 58 ; and on behalf of the appellant, that the qualification as stated in the said list was sufficient, or, if not, the description of the premises in the occupation of the appellant as " part of a house," was a mistake, which could be proved to have been made in the said list, which mistake the revising barrister, by the same section, had power to correct.

The revising barrister thereupon received evidence of the actual nature of the appellant's qualification, and it was proved that he occupied the upper part of the said house and kitchen, having a distinct and separate entrance thereto, and the key whereof he had the exclusive possession of. His landlord occupied the ground floor as a shop, having also a distinct and separate entrance thereto. The appellant's name was inserted in all the poor rates made in the said parish in the year ending the 31st July, 1845, under that of his landlord, but nothing was carried out against the name of the appellant, nor were the names of the appellant and his landlord connected with bracket or otherwise in the rate-

1845.

---

 JUDSON  
and  
LUCKETT.

book. The assistant overseer of the parish stated in his evidence that it was the intention of the overseers, in putting the appellant's name on the rate-book, to rate him.

It was further contended, on behalf of the respondent, that the appellant was not rated to the relief of the poor.

Barrister's decision.

The revising barrister decided that the qualification of the appellant, as stated in the said list, was insufficient in law to entitle him to vote, and that he, the revising barrister, had no power to change the description of the said qualification; and further, that the appellant was not duly rated, and therefore expunged his name from the said list.

Question.

If the Court should be of opinion that the said decision was wrong upon both points, the name of the appellant is to be re-inserted in the said list of voters as follows :

William Henry Judson.	22, Cannon Street.	House.	22, Cannon Street.
-----------------------	--------------------	--------	--------------------

*Welsby* for the appellant. The decision of the revising barrister cannot be supported; first, the description was sufficient to entitle a party to be registered. It has been held in *Wright v. The Town Clerk of Stockport* (a), that the exclusive use and occupation of a separate floor or room in a factory will confer a vote upon the occupier, under sect. 27 of the Reform Act and in *Score v. Hugget* (b) this principle was also recognized. Secondly, if the description was insufficient, the barrister might have amended it under 6 Vict. c. 18, s. 40. Thirdly, the appellant was properly rated. If

(a) *Ante*, 21.

(b) *Ante*, 149.

his name had been connected by a bracket with that of his landlord this case would have been identical with that of *Wright* and *The Town Clerk of Stockport*; the effect, however, is precisely the same as it now stands. [*Maule*, J. How do you get over the first part of sect. 40, which requires the barrister to expunge the name of any person whose qualification, as stated in any list, shall be insufficient in law to entitle such person to vote?] The latter part of the same section gives the barrister the power of inserting the name when the insufficient description is supplied. [*Cresswell*, J. That might have been done if the description here had been "house," but "part of a house" can never mean "a house."] A house in law may mean part of a house.

1845.

---

 JUDSON  
and  
LUCKETT.

*Grove* for the respondent. The description of the appellant's qualification was insufficient. It should come within one of the terms specified in the 27th section of the Reform Act, which the expression "*part of house*" does not; *Daniel v. Camplin* (a), *Daniel v. Coulding* (b), *Hutchins v. Brown* (c). Inasmuch as the description of the qualification differed from that required by the act, the barrister had no power to amend. Again, the rating was insufficient, for there was nothing on the face of the rate to show for what property the occupier was rated; the omission of the bracket distinguishes the present case from *Wright v. Town Clerk of Stockport*, and it falls within the case of *Moss v. Overseers of St. Mary, Lichfield* (d).

*Welsby* replied.

*Cur. adv. vult.*

(a) *Ante*, 195.      (b) *Ante*, 162.      (c) *Ante*.      (d) *Ante*, 116.

1845.

---

JUDSON  
and  
LUCKETT.

TINDAL, C. J.—In this case, the nature of the qualification in respect of which the appellant claimed to vote, appeared on the list of voters made out by the overseers as “part of house.” The revising barrister held the description to be insufficient, and the first question reserved for a determination is, whether such description was sufficient in point of law; we have already held, in more than one instance, that there may be an occupation of a part or a portion of a house so completely separated from the residue as to constitute the occupation of a house as tenant, within the meaning of the 27th section of the Reform Act, and in this case no question is raised as to the occupation being sufficiently separate in that respect, but solely on the point whether the description of the qualification on the list is sufficient, and we think that it is. The description is precisely true, in fact, according to the common understanding of the words, and still may denote such a house as will confer, and as we must take it in this case, does confer a qualification. It becomes therefore unnecessary to consider the second point reserved, namely, whether the revising barrister had the power of amending under the 40th section of the Registration Act. The third point reserved was as to the rating. It appeared that the landlord occupied one part of the house and the appellant the other (no question being before us as to the sufficiency of the occupation), and that the landlord’s name was on the rate, with house opposite to his name, and the appellant’s name under that of the landlord, but nothing was carried out against the name of the appellant, nor were the names connected by bracket or otherwise, and on this state of facts the barrister held the appellant not to be properly rated. But we think upon these facts it appears that the



name of the appellant is on the rate as a person charged, and that a rate so made would be construed to charge the appellant in respect of the premises inserted opposite to the landlord's name in the line above, just as effectually as if the word ditto had been inserted, or a bracket had been made. We therefore think the decision of the revising barrister is wrong on both these points, and that it must be reversed, and the name of the appellant restored to the list.

1845.

---

 JUDSON  
and  
LUCKETT.

Decision reversed.

—◆—

COLVILL, *Appellant*, and WOOD, *Respondent*.

**THIS** was an appeal from the decision of the revising barrister for the borough of Chatham.

CASE.

George Colvill, on the list of voters for the said borough, within the parish of Chatham, duly objected to George Huber, of Chatham Hill, and William Jolley, of Chatham Hill, on the same list, as not being entitled to have their names retained on such list. It appeared that each of them, the said George Huber and William Jolley, claimed to be so entitled in respect of a house in the said parish, and that they had respectively occupied such houses during the required period, at the yearly rent of 10*l.*, exclusive of rates and taxes, and that there was no special agreement between them and their respective landlords as to repairs or insurance. It further appeared that the said rent of 10*l.* was in each case the fair rent of the premises.

If a house is fairly worth 10*l.* per annum to a tenant to rent, the occupation of it is "of the clear yearly value of not less than 10*l.*" within the meaning of sec. 7 of the Reform Act.

In support of the said objections, it was contended, *Objection.*

1845.

COLVILL  
and  
WOOD.

that the proper measure of a clear annual value of a house within the meaning of the 2 Will. 4, c. 45, s. 27, was not the rent for which such house would let to a tenant, but the amount of such rent, after deducting therefrom the average annual expense of landlord's repairs and insurance, and consequently that the houses in question were not of the clear annual value of 10*l*.

Barrister's deci-  
sion.

The barrister being of opinion that the fair annual rent was the proper criterion of value, without any such deduction, so decided ; and the right of the said parties to be retained on the said list being established in all other respects, they were retained accordingly.

*Kinglake*, Serjt., for the appellant. The question in this case turns upon the meaning of the words "clear yearly value," as used in the 27th section of the Reform Act, and which the appellant contends must mean annual value to the landlord after deducting all fair outgoings. The tenant can have no "clear" value, therefore these words cannot apply to him. The 8 Hen. 6, c. 7, enacts, that the knights of the shire should be chosen by the people "whereof every one should have a freehold land or tenement to the value of 40*s*. by the year at least, above all charges," and by the stat. 18 Geo. 2, c. 18, s. 5, no person shall vote for a county "without having a freehold estate in the county of the clear annual value of 40*s*. over and above all rents and charges payable out of or in respect of the same;" it seems clear that the language employed in both the statutes is intended to apply to the owner of the property. So here "clear annual value" is to be distinguished from "annual value," and means the rent minus the usual deductions, which must be made from the landlord's receipts, such as for insurance and necessary

repairs. [*Tindal*, C. J. Many landlords are in point of fact their own insurers.] The question will turn upon the repairs, for the clear yearly value does not depend upon the rent. In *R. v. Tomlinson (a)*, *Bayley*, J., in delivering judgment, says, "In the case of houses the annual profit or value is always a part only of the annual rent paid to the landlord, some portion of that rent ought to be set apart to form a fund for repairing a building when necessary, in other words, to maintain or reproduce the subject of occupation;" and *Parke*, J., in *R. v. Lord Granville (b)*, said, that "the annual value is part only of the annual rent, some portion of that rent should be considered applicable to repairing and replacing the injuries." [*Cresswell*, J. Suppose the property was worth 100*l.* per annum, and that there was a rent charge upon it to the amount of 92*l.*, would the occupier of a house under such circumstances be entitled to a vote?] No doubt in such a case but that he would. [*Cresswell*, J. The language employed in the cases referring to county votes cannot mean clear value to the owners.] In the Parochial Assessment Act, the expression "net annual value" is used, and must be considered equivalent to "clear annual value," and is explained as a rent at which the same might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, tithe commutation rent-charge, if any, and deducting therefrom the probable average annual costs of the repairs, insurance and other expenses, if any necessary, to maintain them in a state to command such rent." A similar construction should be applied to the language of the Reform Act (c).

1845.

---

 COLVILL  
and  
WOOD.

(a) 9 B. &amp; C. 163.

(b) 9 B. &amp; C. 188.

(c) The respondents did not appear to argue, and the case stood over for an affidavit of service of notice of appeal to be produced.

1845.

---

COLVILL  
and  
WOOD.

TINDAL, C. J.—In this case the point of law reserved by the revising barrister for our determination was, whether in the case of a person claiming the right to vote for a borough by reason of the occupation of a house as tenant, the fair annual rent was the proper criterion of value, without deducting therefrom the average annual expense of landlord's repairs; and we are of opinion that the revising barrister was right in holding the fair annual rent, without making such deduction, to be the clear yearly value, within the meaning of the statute 2 Will. 4, c. 45, s. 27. It was contended before the revising barrister, not only that the average annual value of the landlord's repairs should be deducted from the rent paid by the occupier, but the landlord's expense of insurance also; but this latter appears so plainly to be a voluntary charge on the part of the landlord, who, if he thinks right, may be, and very often is, his own insurer, that we declared our opinion in the course of the argument, that the insurance never could be held a necessary deduction in order to ascertain the clear yearly value of the premises; and we think the same as to the deduction of the landlord's repairs. This is the case of the occupier of a house as tenant, who pays a rent of 10*l.* per annum, exclusive of rates and taxes, that is, so far as the tenant is concerned, a clear yearly rent to the landlord of 10*l.* per annum. But the statute requiring that the house must be of the clear yearly value of 10*l.* per annum in order to confer a qualification, it is undoubtably not enough to find that the tenant pays a rent of that amount, for it is manifest such rent is not necessarily the measure of the true value. The rent may be exorbitant, and such as no other tenant would give, or it may have been fraudulently fixed at that sum, in order to acquire the vote; it is necessary therefore, in order to satisfy

this statute, to show further that the house is of that clear yearly value, and for that purpose it is found in the case before us that 10*l.* per annum is the fair rent of the premises, and whether this is the proof of the clear yearly value, is the question before us. There is some difficulty in ascertaining the true meaning of the act in the use of this expression. When the right to vote depended, as it did formerly, on property only, there was no difficulty in discovering the clear yearly value. Thus where the 8 Hen. 6, c. 7, ordained that the knights of the shires should be chosen by people "whereof every one shall have free tenement to the value of 40*s.* by the year at the least, above all charges;" and again, where the 18 Geo. 2, c. 18, s. 5, has enacted, that no person shall vote without having freehold of the clear yearly value of 40*s.*, over and above all rents and charges payable out of or in respect of the same, it was easy to prove the yearly value to the owner, more especially when the sixth section of the latter act had defined the nature of the charges intended to be deducted by enacting that no public or parliamentary tax, nor any rate or assessment whatever, should be deemed to be any charge payable out or in respect of any freehold estate, within the meaning of the act: but in the present case the legislature has created a new qualification for voting, namely, that of the occupier, as tenant of a house of the clear yearly value of not less than 10*l.*, applying to the case of the tenant a description or definition, which, in strictness of language, and under former enactments, belonged exclusively to the owner of the property. For in strict propriety of language, although the rent may be a fair criterion of the value to the landlord, it cannot be so to the tenant, the value in the case of the latter depending on the use to which he puts it, the profits he makes

1845.

---

COLVILL  
and  
WOOD.

1845.

---

COLVILL  
and  
WOOD.

by his occupation, and other circumstances that exist in each case, quite independently of his paying 10*l.* a-year rent to the landlord. But we think it obvious the legislature could never have intended that the right of a tenant to vote should depend upon calculations so nice, artificial and difficult of application. And although it may not be easy to give effect to all the words of the sections, we think they may well bear the meaning that where a house is occupied by a tenant at the clear annual rent of 10*l.*, if such house is fairly worth that rent to any one wanting to occupy it, if the house would generally fetch such rent, the occupation is that of a house of the clear yearly value of not less than 10*l.*, so far as the tenant is concerned. For we think the legislature intended that any person who is in such a condition both as to credit and circumstances, as to be allowed by the owner of the house, which is fairly worth the clear sum of 10*l.* to rent by the year, to become his tenant thereof, is a fit person also to give a vote in the election of a member of parliament for a borough. In the course of the argument we were referred to cases under the act 13 Car. 2, c. 42; but we think the appellant can derive no benefit from those cases. The rateable value of property has generally been considered that which it would fairly let for, the tenant bearing all such public burthens as by law attached to his occupation; and in consequence of disputes as to the principle upon which properties more or less perishable should be rated, the statute 6 & 7 Will. 4, c. 96, was passed, and that statute prescribed the mode of ascertaining the rateable value of all kinds of property (*viz.*, that it should be the net annual value left after making certain deductions, specified in the act, from the rent that could be obtained for it); and if we found in the 2 Will. 4, c. 45, s. 27,

the expression "rateable value," we must ascertain such value by applying the rule laid down by the 6 & 7 Will. 4, c. 96; but the expression which we have to construe is "clear yearly value," without any directions as to the mode of ascertaining it: the consideration of these statutes therefore made entirely diverso intuitu does not, as we conceive, militate against the principle we have laid down, as that which ought to give us the interpretation of the 27th section. For these reasons, we think the decision of the revising barrister is to be affirmed.

1845.

---

 COLVILL  
and  
WOOD.

Decision affirmed.

KNOWLES, *Appellant*, and BROOKING, *Respondent*.

THIS was an appeal from the decision of the revising barrister for the borough of Dartmouth, who stated the following

CASE.

John Brooking, on the list of persons entitled to vote in respect of property occupied within the parish of St. Saviour in the said borough, objected to the name of John Knowles being retained on the said list. The notice of objection sent to the said John Knowles by the said John Brooking was as follows:

To Mr. John Knowles,

I hereby give you notice that I object to your name being retained on the list of persons entitled to vote in the election of a member for the borough of Clifton Dartmouth Hardness.

Dated this 22nd day of August, 1845.

(Signed) John Brook,

Of Higher Street, Dartmouth, on the List of Voters for the Parish of St. Saviour's.

The notices of objection sent to the party objected to, and to the overseers, was signed by the objector, with the addition of his *true place of abode*, which differed from that inserted against his name on the list of voters. Held good. *Mauls, J. dissente.*

1845.

---

KNOWLES  
and  
BROOKING.

A notice similarly signed was sent by the said John Brooking to the overseers of St. Saviour's. The place of abode of the said John Brooking was stated in the said list to be New Road. The said John Brooking had offices in New Road, and a servant lived in the house to look after them, but the said John Brooking did not live there either at the time of the publication of the list of the overseers, or at the time of the service of the notice. The said John Brooking's place of abode was truly described in the notice of objection, and his place of abode was stated in the list of voters for the parish of St. Peter, another of the parishes comprised within the said borough to be in Higher Street. It was urged on behalf of the said John Knowles, that John Brooking's place of abode in the notice of objection ought to have been the same as that stated in the list of St. Saviour's, to which list he referred in the notice. On behalf of the said John Brooking, it was contended that by giving his true place of abode, he had followed the forms Nos. 10 and 11, schedule (B.), referred to in the 17th section of the Registration Act, 6 Vict. c. 18, and that the notices are therefore sufficient. The revising barrister decided that they were sufficient, and the qualification of the said John Knowles not being proved, he erased the name of the said John Knowles from the said list. The question for the opinion of the Court is whether the said John Brooking's statement of the true place of his abode in the said notices was under the circumstances hereinbefore stated, sufficient in law to sustain the said notices against the said John Knowles. If the Court are of that opinion, the register is to stand without amendment. If the Court are of a contrary opinion, then the register is to be amended by inserting therein the names of John Knowles and other persons.



*Kinglake*, Serjt., for appellants. The requisitions of the act have not been complied with. The name of the objector on the list of voters for the parish has "*New Road*" affixed to it as his place of abode. In his notice of objection he has given Higher Street as his place of abode. The question is what is meant by the words "on the list of voters," in 6 Vict. c. 18, schedule (B.) No. 6. I submit they refer to the *place of abode*, and that he must insert the residence attached to his name in the parish list, not any residence he may have subsequently acquired. The only object of this requisition in the notice of objection is to identify the objector. [*Tindal*, C. J. So that if there was a mistake in the residence given in the list of voters, he could not object.] If that were so, he might rectify the mistake. But that is not so here, for the residence remains unchanged on the list. [*Maule*, J. You say that supposing an objection sent signed J. S. of Higher Street, on list of voters, and he looked into the register, and saw there was no J. S. of Higher Street, he need not trouble himself any more about the matter, just as if there were no J. S. at all in that list.] Yes. If J. S. of Cheapside were on the list of voters and this notice of objection were signed J. S. of Manchester, he need not go to Manchester. [*Erle*, J. Take it the other way. Suppose the party objected to wanted to inquire what was the real ground of objection, and the party has changed his residence, will the old residence do, though it may have been changed some time ago?] I should say the inconvenience would be less. He might go to the old abode and there find out the new one. In *Gadsby v. Warburton* (a), the Court seemed to be of opinion that the place in the notice of objection ought to be the same as the place in

1845.

---

 KNOWLES  
and  
BROOKING.
(a) *Ante*, p. 77.

1845.

---

KNOWLES  
and  
BROOKING.

the list of voters, though it may have been changed. *Maule*, J. seems to have anticipated this very case, as he says "I think it was meant that the place of abode should be stated as given in the list of voters." [*Maule*, J. I think I meant that if it was intended that the place whence the notice was sent should be given, it would rather have been put as a date. Thus :—

" Manchester,

" I give you notice, &c."

But this is not decisive of the objection. For it is quite consistent with that opinion that "A. B. of &c." may mean the place of which the party is a resident, not the place from which he sends the notice, and yet that it may mean his present residence. Thus, suppose a person in course of business goes to Manchester, yet that he resides at Rotherhithe, then he should state himself as of Rotherhithe, not of Manchester.] It appears from Mr. Justice *Erle's* judgment, that the two descriptions must be identical. If the place of abode is altered, the voter is unable to identify the objector, and that confusion is created which it was the express object of the act to prevent. If a party is objected to, the objection is to be served at the abode described in the list. Therefore, it is clear that for some purposes the abode in the list is to be taken as the true one. If the objector has two real places of abode, is he to be allowed to give one in the list of voters, and another in the notice of objection? [*Tindal*, C. J. If he had changed his abode, it would be easy for him to give his old place of abode, and add, now of, &c.] It must be the real construction that he is to adhere to the name on the list; that if he changes his residence, he may add something by way of explanation, but not omit to give the place of abode stated in the list.

*Manning*, Serjt., contrà, drew the attention of the Court to the language of the revising barrister, who finds that the objector did not live there. The entry on the list was precisely as if the overseers had made a mistake, and instead of putting *New Road*, had inserted *Commercial Road in the County of Middlesex*. The intensity of the falsehood can make no difference. The abode of the party never in fact was in New Road. [*Maule*, J. Suppose the Christian or surname had been wrong in the list, would it be sufficient to put the right one in the notice of objection?] If W. B. were put for J. B. in the register, then J. B. would not have been on the list, and therefore would not be in a position to object. [*Maule*, J. But if he had changed his name in the meanwhile.] That might raise a nice question. [*Maule*, J. I can see no nicety in it: your argument must be that the new name would be enough.] Was he bound to adopt the overseers' blunder, however gross that blunder might have been? For in boroughs, overseers do not make out lists from claims put in, but from their own personal knowledge and such information as they can derive from the poor rate. It is only if a person who is entitled to vote is omitted, that he may put in a claim [*Tindal*, C. J. Or if he is wrongly described.] The overseers publish the list of claimants and objections at the same time, and it appears that *Brooking* seeing his name on the list of voters as it clearly had a right to be, and having no reason to apprehend any objection to his abode being wrong, did not think it worth while to amend that statement by putting in a claim, yet thought it right to give his real place of abode in his notice of objection. [*Maule*, J. If it is necessary to make the notice good, that the abode should be the real abode at the time of signing

1845.

---

 KNOWLES  
and  
BROOKING.

1845.

---

KNOWLES  
and  
BROOKING.

the notice, then it must be proved before the revising barrister, and therefore the party who appears for him must, before he goes into the objection, prove that such is the objector's real place of abode, which would rather incumber the proceeding. Is it the practice of the revising barrister to take affidavits?] It is believed not. If the objector fails in supporting the objection, he is liable to costs. Now if the place of abode in the notice of objection follows a totally unfounded statement in the list of overseers, there is no possibility of finding out his residence. One reason for inserting this provision is that the party objected to may communicate with the objector, and either satisfy the objector that his name is rightly on the list, or give up his claim, if the objector satisfies him to the contrary. Both within the words of the act and the forms schedule (B). Nos. 10 and 11, it is sufficient that A. B. should give his real place of abode at the time of signing the notice. In the forms for notices of objection to the county voters there is some difference of expression. In No. 5 the notice of objection is directed to be sent to Mr. (here insert the name and place of abode, &c. *as described in the list*). This studied difference of expression is almost a declaration that the place of abode of the objector in schedule (A.) No. 5, should be given as it really is, and that being the same form as in schedule (B.) No. 11, with respect to borough votes, it follows that there too the real place of abode is to be given. [*Tindal*, C. J. There is a distinction between No. 4 and No. 5 of schedule (A.) In No. 4 it is simply written A. B. of (place of abode). In No. 5 it is similar to the schedule (B.) No. 11, i. e. A. B. of (place of abode) on the register of voters for the parish of —, not as if the place of abode must necessarily follow the place on the list, but as being a

meer assertion of the fact that the objector is on the register.] Such assertion is needed to show that he is qualified under section 17 to object. [*Tindal*, C. J. When the party is giving the notice, he can only show the party objected to by the place of abode on the list, but he himself knows where he is to be found.] Any one reading this form would reasonably conclude that "on the list of voters" was intended as a mere assertion of that fact.

1845.

---

 KNOWLES  
and  
BROOKING.

*Kinglake*, Serjt., in reply. It is contended on the other side that the insertion of the place of abode in the notice of objection is to give the party objected to information where the objector is to be found. It is submitted that the sole reason is to indentify the objector with the name on the list. If W. S. was on the list as J. S. would it do to sign his notice as W. S.? [*Tindal*, C. J. Probably he would not object at all, because he is not on the list.] But he has a right to put in his claim. [*Tindal*, C. J. Yes, and he would not be in time to make objection. There is no great harship in that.] With reference to the argument founded on schedule (A.), Nos. 4 and 5, it will be seen that the object of those two forms is different. In No. 4 the notice is given to the overseers, but when the objector serves notice on the person objected to, he is bound to find the abode stated in the register of the parish, in order that the party should not have to search through all the parish registers, but at once refer to the particular parish, and just so when he has got that parish, he is entitled to have the like information and be directed by *the* place of abode in the register to the particular name. [*Tindal*, C. J. Then you say that No. 4, giving the real place of abode, is different from No. 5, which you contend gives the

1845. place on the register.] I do not admit that No. 4 means the real place. [*Tindal*, C. J. I think it does.] In *Gadsby v. Warburton* (a), *Maule*, J. refers to this very form, schedule (B.), No. 4, and from the omission of the word "of" in that form seems to conclude that in schedule (A.) No. 5, it is intended that the place of which the party is described should be given. [*Erle*, J. What is the object of identification? You mean to ascertain whether the objector is on the list of voters. But the notice says "I am on the list." If he will falsely state that, what is there to prevent him forging a name and place of abode?] We must not be speculative as to whether this is the best mark of identification. It is sufficient that it is that which is given by the legislature. Difficulties are suggested as arising from this mode of construction, but there are more likely to arise from the opposite construction. [*Maule*, J. A discussion might arise before the revising barrister which is the real place of abode.] If the real object be to enable the party to find the objector, he may have changed his abode the day after signing the notice. [*Maule*, J. I do not think any communication was contemplated between the party objected to and the objector.] *Manning*, Serjt. The sect. 17 enacts that every person whose name is inserted in the list of voters may object. Therefore he may object, though no place of abode be inserted opposite his name, but in such case how can he comply with the form A. B. of (*place of abode*), unless those words mean his real place of abode.

KNOWLES  
and  
BROOKING.

*Cur. adv. vult. (b)*

(a) *Ante*, p. 77.

(b) In consequence of a difference of opinion among their Lordships, separate judgments were delivered.

TINDAL, C. J.—The question reserved for our determination by the revising barrister in this case is, whether the notices of objection against the name of a person being retained on the list of voters for the borough, which notices were signed by him as objector, with the addition of his *true* place of abode, being another and a different place from that inserted against his name on the list of voters, are sufficient. The revising barrister held the notices to be sufficient; and although the question may be subject to considerable doubt, and one of my learned brothers, for whose judgment I entertain the greatest respect, thinks differently, the opinion at which I have been compelled to arrive is, that the revising barrister's decision was right. The forms of the two notices upon which the precise questions turn are those numbered 10 and 11 in the schedule (B.) in the Registration Act (6 Vict. c. 18), and it is upon the construction of those forms that the question must mainly turn. But it may receive some light from the consideration of the forms numbered 4 and 5 in schedule (A.) of the same act, and also from the same forms (since repealed) given in schedules (H. and I.) of the statute 2 Will. 4, c. 45. The forms in question, numbered 10 and 11 in schedule (B.), each concludes thus: "(Signed) A. B. of —, (then there is the place of abode in parentheses,) on the list of voters for the parish of —." And the appellant contends that these latter words, on the list of voters for the parish of —, operate as a direction or requisition to the voter that he must fill up his place of abode by inserting the place of abode which is against his name in the list of voters. But the respondent, on the other hand, contends those words mean no more than a simple acknowledgment that the objector's name is on the list of voters, and was as required to be given by the 17th

1845.

---

KNOWLES  
and  
BROOKING.

1845.

---

KNOWLES  
and  
BROOKING.

section of the statute 6 Vict. c. 18; for it is to be observed that the 17th section requires only that the name of the objector should have been inserted in the list of voters for the borough, and that he should give the notice of objection to the overseer according to the form numbered 10 in the schedule (B.), or to the like effect; and that he should also cause to be given, or left at the place of abode of the person objected to, as stated in the list, the notice according to the form numbered 11 in the said schedule; so that the question substantially turns upon the construction of the form so referred to and given in the statute. It appears to me, looking at the concluding words of those two forms, they do not in any manner qualify the sense of what had preceded, namely, the place of abode, nor in any manner refer to the place of abode contained in the list of voters, but that the whole sentence is satisfied by the true place of abode of the objector at the time of giving the notice being inserted therein. The words between the parentheses are only "the place of abode," words which, taken absolutely by themselves, and in their natural sense, would denote the true place of abode of the party objecting; for the words between the parentheses are not "place of abode" in the list of voters, which necessarily require the construction contended for by the appellant, nor are the words as in the list of voters, which latter form would also necessarily have required the same construction; but the words within the parentheses are simply "the place of abode," and the words that follow contain a separate and distinct proposition, that such name, and not such place of abode, is to be found on the list of voters. And it appears to me to confirm this construction of the form in the statute, that, in the 17th section, which gives these two forms of



notices, the notice which is to be given to the parties is directed to be left at the place of abode of the person objected to, as stated in the list; whereas the form itself may be considered as if it were actually inserted in the body of the 17th section. This distinction in the language of the legislature, with respect to the place of abode of the person objecting, and that of the person objected to, still further sanctions the difference of interpretation to be put upon the two; and further, on referring to the forms of the corresponding notices, as given in schedule (A.) of the same act, in case of objection to the name of the voter being retained on the list of voters, this view of the subject appears to be confirmed; and schedule (A.), No. 4, which is the form to be given to the overseers, contains two columns: the first one headed, "Christian and surname of the voter objected to, as described in the list or register;" the second column is, "Place of abode, as described;" but the signature of the objector itself is only required to be "A. B., [*place of abode*]," simply, and nothing more. In that form, therefore, the place of abode of the objector must, in its natural sense, be construed "the place of abode" in which he then is, and no other, more particularly when contrasted with the requisitions as to the place of abode of the party objected to, which is required to be as described in the register. The form which immediately follows, (schedule (A.), No. 5,) which is to be given to the party objected to, leads to the same conclusion. The name and place of abode of the party objected to are required to be inserted as required in the list; the name of the objector is to be "(Signed) A. B., of — [*place of abode*], on the register of voters for the parish of —." It is this form of notice (No. 5) to which the words are for the first time subjoined, "on

1845.

---

 KNOWLES  
and  
BROOKING.

1845.

---

KNOWLES  
and  
BROOKING.

the list of voters for the parish of —.” In all the preceding forms of notice, both that given to the overseer (No. 4), and also in the forms of notice given under the former statute, 2 Will. 4, c. 45, the signature is directed to be, “A. B., of — [place of abode],” and nothing more. But if the notice of objection under the statute of Will. 4 (whilst these forms remained in force), and the notice of objection to be given to the overseers in the schedule (A.), No. 4, in the Registration Act, are all satisfied by adopting the place of abode of the objector at the time named, no more than the simple place of abode being required by any words in those cases, there is surely nothing in the reason of the thing which would call for the insertion of the very same place of abode of the objector as that in the list of voters in the other remaining forms given by the statute; and certainly I cannot say such an objection is made necessary by the enacting words of the statute, or by the form given in the schedule (A.). The words “on the list of voters” appears to me to be no more than a direct allegation of the existence of a fact that has been made essential by the 17th section, namely, that the objector’s name is on the register for the county or the list of voters for the borough, as the case may be; a fact, the truth of which may be determined by the overseer by a reference to the register or list, of which a copy is in his custody; or by the party objected to, by his inspecting such register or list, which he is empowered by law to do. And although it is objected that if a new description is given for the first time of the objector’s place of abode, it must give rise to difficulty or confusion, it seems a sufficient answer, that no real difficulty can follow unless there happens to be more than one voter upon the same register or list hav-

ing the same Christian name and surname; for if there is but one, then it must be the man who is objected to, and no other, however the place of abode is described; and even if there be more than one, all the difficulty will be removed when the proper time arrives, namely, when the case comes before the revising barrister, at which time the identity of the objector must be made out; and, in the meantime, the giving the true place of abode of the objector must afford a better opportunity of inquiry and communication than the adding of the old place of abode, which, it must be assumed, from some cause or other, is incorrect at the time of giving the notice. On the ground, therefore, that the construction above given of the form of notice appears to me the most natural and simple, and that it is confirmed by the heading of the forms above adverted to, I have arrived at the conclusion that the decision of the revising barrister is right. I forbear to enter upon an examination of the relative convenience or inconvenience of either decision, not only because they appear to me to be nearly, if not quite, balanced, but because I think that, unless there is some great preponderance in that respect, our determination ought to rest on the words of the statute itself.

1845.

---

 KNOWLES  
and  
BROOKING.

COLTMAN, J.—In this case the question has been fully stated by my Lord Chief Justice, and I concur in the opinion expressed on the subject and the reasons he has assigned. I am not able to see any reasonable advantage in the one construction contended for over the other, and therefore I think the most plain and natural is that which ought to be adopted; and it seems to me the words in the parentheses, place of abode, at the bottom of the form No. 10, of schedule (B.), 6 Vict.

1845.

---

KNOWLES  
and  
BROOKING.

c. 18, in their natural sense, do mean his *true* place of abode, and must be so understood, unless there are some words of qualification added to it. The following words "on the list of voters for the parish of —," describe the quality of the objector himself, but not the quality of the place in which he lived. John Brooking, the objector, is truly said to be on the list of voters for the parish of St. Saviour; but it cannot be said with propriety of language, Higher Street, Dartmouth, is on the list of voters for the parish of St. Saviour. If the intention of the act had been to require the objector to state, not his true place of abode, but the place of abode described in the list, it would have said so in plain terms, and the form would have been A. B. "on the list of voters for the parish of —," with the parenthesis place of abode as described on the list, or to that effect. And I am the rather led to this conclusion I have come to from the use of the term to that effect in the forms in schedule (A.), Nos. 4 and 5, the words used in No. 4 being place of abode as described, and the words in No. 5 being place of abode as described in the list. The reasons for the construction I have put on the forms in question have been already stated with so much distinctness by my Lord, that I do not think it necessary to add anything further, except to say that I fully concur in those reasons.

ERLE. J.—I fully concur in the judgment that has been given. It was objected that the notice of objection containing the true place of abode of the objector was void, because it did not contain that which was by mistake stated on the list of voters to be his place of abode; the barrister decided against the objection, and I think he was right. The question turns upon the con-

struction of the words directing the signature, in the forms numbered 10 and 11, schedule (B.), 6 Vict. c. 18, "A. B. of [*place of abode*] on the list of voters for the parish of —." The appellant contends, the words on the list of voters are predicated of the place of abode. By the 2 Will. 4, c. 45, schedule (B.), form No. 5, the objector is required to give his name and place of abode with the words (signed) A. B. [*place of abode*], those words require the true place of abode. By the 6 Vict. c. 18, the insertion of the name of the objector on the list of voters is the sole qualification required to object to a vote. Forms numbered 10 and 11, schedule (B.), not only require the name and place of abode, with the same name as before, but also require the name and addition on the list of voters. According to the appellant, the words on the list of voters apply to the place of abode, and are to be construed to be A. B., described on the list of voters of [*place of abode*]. To this there are several objections; first, the words must be altered before they express this meaning, whereas they are capable of a sensible application without any alteration; secondly, when so altered they contain an immaterial statement, whereas if applied to the name they are material to show the qualification; thirdly, it gives different meanings to the same words in two acts in *pari materiâ*; and fourthly, if the described place of abode had been intended, these words would have been used, as they are used on several occasions in both statutes where the voter is referred to the list for the place of abode of another person whom he may not know otherwise than from the list. There is no instance in either act, unless the present is one, where a party is required to give any other than his true place of abode, which he is presumed to know and to be able to give without any practical difficulty.

1845.

---

KNOWLES  
and  
BROOKING.

1845.

---

KNOWLES  
and  
BROOKING.

I can discover no good effect from requiring the place of abode on the list instead of the true place. If a communication is contemplated, the true place is the best place. Where the name occurs only once, the identity is clear without any more being said; if the name occurs twice, the objector is identified by introducing that which really could not be useful if no communication is intended. The transcription of the place of abode is as easy as the transferring the name. For these reasons I concur in the judgment of my Lord.

MAULE, J.—This was an appeal from the decision of the revising barrister for the borough of Dartmouth. It was contended that the notices of objection which had been given to the overseers, and to the persons objected to, were sufficient. These notices concluded with the words “(Signed) John Brooking, Higher Street, Dartmouth,” on the list of voters for the parish of St. Saviour’s. The place of abode of the objector is mentioned on the list of voters referred to as New Road and not Higher Street; the fact being, that although he had offices in New Road his place of abode was Higher Street. The notices were objected to on the ground that they omitted the place of abode as mentioned on the list referred to. The act 6 Vict. c. 18, requires, in sect 13, the overseers of every parish in the borough to make out the list of persons entitled to vote, according to the forms numbered 3 and 4 in schedule (B.), that the Christian name and surname of each person on the list shall be written at full length, with the true place of abode and the nature of the qualification. The forms numbered 3 and 4 in question have columns for the Christian and surname at full length, and the place of abode. Section 17 gives to any person, whose name shall have been inserted in

any list of voters for the borough, power to object to any other persons, as not being entitled to have their names inserted on the list; and it provides that he shall give notice of his objection according to the forms numbered 10 and 11 in schedule (B.) The forms 10 and 11 conclude thus,—“Dated this — day of —. (Signed) A. B. of — [*place of abode*], on the list of voters for the parish of —.” The question is, whether this provision as to the notices has been complied with; in other words, whether a notice is sufficient which wholly omits all mention of the place of abode of the objector as it appears on the list of voters. For the appellant it was insisted that this section of the act required the place of abode of the objector as it appeared on the list of voters to which the notice refers, and that it must appear on the notice; and in cases where there has been a mistake in the list of voters, or a change of abode since it was made out, it might or might not be necessary to add a mention of the place of abode at the date of the objection. For the respondent it was contended, the place of abode required to be mentioned was that at the date of the objection, and that the act did not require any mention of the place of abode as it appeared on the list of voters. And the question to be decided depends upon the construction of the 17th section of 6 Vict. c. 18, and the notice of objection therein prescribed. It may be convenient to consider the general nature and purposes of the act in which the section occurs. The act 2 Will. 4, c. 45, “For the better Representation of the People of England and Wales,” contains, as incidental to the important changes it makes, certain provisions for forming the register of persons entitled to vote for members of parliament. These provisions having been insufficient, the act 6 Vict. c. 18, was

1845.

---

 KNOWLES  
and  
BROOKING.

1845.

---

KNOWLES  
and  
BROOKING.

passed, of which the principal object was to make a new set of regulations for forming the register of voters. This act has accordingly made many additions to, and alterations in, the provisions of the Registration Act of William, among which are to be noticed, first, that the act of William gives in section 39 the power of objecting to the names of persons being retained on the list of voters in counties, not only to persons "on the register" but to those who had claimed to be inserted on the list of voters, whether actually inserted or not; while the act of Victoria, by section 17, confines such a power of objecting to persons whose names are on the register. only; secondly, that in the forms given of the list of voters and claimants and persons objected to in cities and boroughs, in the act of William, no mention of the place of abode is required except in the cases of freeholders, and of rights of voting not depending upon property, whereas in the case of county voters the place of abode was always to be inserted. So that, in the case of borough voters on the register, many voters under that act could be described by their place of abode. This is altered by the act of Victoria, which requires that in all cases, without exception, both in counties and boroughs, the place of abode as well as the name shall appear on the list. The third alteration is in the form of notices of objection, which, under the act of William, did not contain any statement that the objector "was on the register," or was one of the claimants in a county, or was "on the list" of voters in a borough, and did not in any other manner show he was one of the class of persons to whom the right of objecting belonged. The act of Victoria in all cases, with one exception, to be hereafter noticed,



requires the objector to describe himself "as on the register" or "list of voters," and to refer particularly to the parish on the register or list. The object of these alterations probably was to identify persons mentioned in the list more completely, so as to enable those whom it concerned to know in an easy and certain manner who the person meant was, and to enable the party objected to, on referring to the list or portion of the register mentioned, to ascertain whether the objector had shown himself to have a right to object; and, in case of its not appearing that he had such a right, to enable him instantly to disregard the objection, which the revising barrister would be bound to treat as not sufficient to call upon him to prove his qualification. The alterations are not only more adapted to effect this purpose, but they are also in conformity to the law, which in many cases has made it necessary, and which general convenience has in almost all cases made it desirable, to identify the person by means of his christian and surname as well as "his place of abode," and they are in conformity also with the rule which, in cases of special authority or power to be exercised in writing, requires the writing to show that the person assuming to exercise it is one of those to whom it belongs. The form of notice before referred to, as an exception to the general rule, that under the act of Victoria the forms of notices of objection require the objector to describe himself as on the register or list, confirms the view that the meaning of this form is to enable the party objected to to refer to the list or the register to ascertain whether the objector is to be found upon it. That exception is the form numbered 4 in the schedule to the act of Victoria, which form is not a notice to the party objected to, but to the overseers of

1845.

---

KNOWLES  
and  
BROOKING.

1845.

---

KNOWLES  
and  
BROOKING.

the county, and this form concludes with the words "A. B. [place of abode]," without any statement of the objector being on the register. Now it is to be observed the overseers have no concern whatever with the question whether the objector is on the register or not; by section 8 of the act of Victoria they are required to publish a list of persons against whom notices of objection have been given to them, and by section 34 to bring the original notices before the revising barrister, who, and not the overseers, is to judge of their sufficiency. The overseers have no interest or duty calling upon them to ascertain whether the objector is on the list, and a reference to it would not assist but might embarrass them, as it might be calling upon them to refer to the list of the whole county. This view is in conformity with section 3 of the act that requires the clerk of the peace to send to the overseer a copy only of such part of the register as relates to his parish, thus treating him as a person who could have no concern with the facts of the register relating to other parishes. It was not denied on the part of the respondent that the notices of objection in question ought to contain an assertion of the right to object, but it was contended that it was sufficiently stated in the words "on the list of voters for the parish of —," and that the preceding words, "A. B. [*place of abode*]," were not intended to require a statement of the name and addition of the objector as inserted in the list, but his name and abode only at the time of signing the notice. It is material in this part of the discussion to observe, that the immediate subject of inquiry is, what is the meaning of a notice filled up according to the form? for it is such a notice, and not the form itself, that is sent to the party objected to. Want of attending to this has, I think,

produced some confusion. The form of notice has the words “(*place of abode*,)” in italics, within a parenthesis, between the words “A. B. of,” and the words on the list of voters, but these parentheses are not to be retained in the notice when drawn, but are only meant to show the words within them are not to be the very words in the notice but are only a direction as to what those words shall be; and this is manifest from the word “of” being not within the parenthesis, so that the notice, according to the form, to take an example, would run thus: “John Smith, of Broad Street, on the list of voters for the parish of St. Mary,” without any parenthesis. The question is, how a notice in these words should be understood. It is a mistake to treat it as if the parenthesis was retained. It is to be observed, the right to object, given by the act of Victoria, was not dependent on the right to be put on the list; for a party may have a right to be on the list, but he may have no right to object, if in fact his name is not inserted on the list, or he may have no right to be put on, but if on the list, he yet may have a right to object in respect of being in fact on the list, the right to object being entirely dependent upon some one entry on the list of voters, whether the name and place of abode be correctly stated in such entry or not. It seems to me that this construction of the forms is more in conformity with general rules of law, and the intention of the act of Victoria, which requires the notices to point out distinctly which of all entries on the list is that to be insisted on as the foundation of the right to object; thus not merely claiming the right or making a general assertion, from which it would be inferred; but stating it in conformity with the rule that prevails with respect to the exercise of power and authority, by writing, stating a particular

1845.

---

 KNOWLES  
and  
BROOKING.

1845.

---

KNOWLES  
and  
BROOKING.

fact on which the right depends, thereby enabling the voter to ascertain, by a simple inspection of the list referred to, whether the right to object, which is relied upon, does really exist. A more minute consideration of the forms of notice drawn according to the act, confirms this construction; for the natural and obvious meaning of the words "on the list of voters for the parish of St. Mary" following "John Smith, of Broad Street" (to use the same example), is that the name of "John Smith" and "Broad Street" are mentioned in the list as the name and place of abode of a voter, and not that the objector is a person whose name and present place of abode is "John Smith, of Broad Street," but whose name and place of abode on the list may be the same or a different one. It cannot really be denied, in the absence of the parenthesis, that the words "on the register of voters for the parish of St. Mary" are meant to operate in like manner over the whole clause "John Smith, of Broad Street," or they operate on no part of it, for it seems difficult to contend that they operate differently on the words "John Smith" and on the intervening words of "Broad Street" so as to mean that the name of the "voter on the list" was "John Smith" but not to mean "the place of abode" at the time was "Broad Street," and accordingly, it was argued for the respondent, that the words "on the list" did not import either that the name of "John Smith" or "the place of abode" "Broad Street," was mentioned in the list. That is certainly a more reasonable construction than that which treats the words "on the list," &c. as operating on the words "John Smith" and as having no operation on the intervening words of "Broad Street," which construction seems to rest on a tacit but erroneous application of the parenthesis which is

found in the form to the words of the actual notice in which it is not found. That the notice is to be understood as not merely affirming that the objector is "on the list of voters" and therefore has the right to object, but as referring to the particular entry, is further confirmed by the form requiring the notices to specify a particular list, in which the objector is to be found. If it were intended as a mere assertion of the right to object, it would be sufficient to state the objector was on the list of voters for the borough, and in the corresponding case of the county, that the objector was on the register, without saying as is required by the schedule (A.), No. 5, for what parish. As long as the particular list is referred to, it is needful that the particular entry should also be referred to, as being in furtherance of the same object. It was contended for the respondent, that by the construction contended for by the appellant, the voters who might wish to communicate with the objector might be prevented doing so in the case of an objector whose present place of abode was different from that on the list referred to, whether this difference arises from error or change. It is doubtful whether the act contemplated any such communication; it does not authorize or require it; it imposes no duty to make, nor confers any right on the maker of any such communication, but if it did contemplate such communication, such would most probably be very rare, and cases of error or change are a very small portion of the number of cases that can arise; such cases of change that would prevent the objector being reached by a letter directed to him at his place of abode on the list, must be a very small number of the whole number of cases of error or change; and it may be observed, in the case now in judgment no such inconvenience did occur. The legislature, in

1845.

---

KNOWLES  
and  
BROOKING.

1845.

---

KNOWLES  
and  
BROOKING.

the more important cases of notices of objection, where perhaps it would be more reasonable that the voter would have a right to receive it, have considered that it is sufficient to send the notice to the place of abode "mentioned in the list." Indeed the whole scope of the act of Victoria seems to be that, for all purposes connected with the registration, the description on "the list," with the name and place of abode, shall be taken to be the true description, and the effect of this provision will undoubtedly be, that every voter who takes an interest in the election will take care the notices, if directed with the name and place of abode on the list, shall be forwarded to him. But even supposing it was the object and intent of the act to enable the party objected to to communicate with the objector, a distinct statement of the right of the objector is more important and desirable than the mere mention of the name. Though this purpose be the one which the notice was intended to effect, it may be in cases of error of places of abode that the notices should actually have the present description of the place of abode as well as that on the list of voters, but it does not follow it shall suffice if there is a mere mention of the place of abode, as mentioned "on the list." An argument was drawn from schedule (A.), No. 5, where in the notice of objection the form was given thus: "To Mr. — of — [*here insert the name and place of abode of the person objected to as described in the list, and in the case of notice to the tenant of the qualifying property, insert his name and place of abode as described in the list*]." At the end of the form it is "(Signed) A. B. of — [*place of abode*], on the register of voters for the parish of —," in the same words as the form in question, only putting "the register" for "the list of voters." Here it

is said the insertion of the words "as described," between the last and the first parts of the notice, and the omission of the words "on the register" in connexion with the words "place of abode" within the parenthesis in the last part, shows the "place of abode" in the last part is not to be that "on the register," but the insertion or omission of these words may be otherwise accounted for. In the first part "place of abode" is mentioned ["place of abode] on the register of voters for the parish of —," and no such words as "on the list of voters for the parish of —," which occurred in the last part of the notice, and which, as I have stated before, alone refer to the place of abode as that mentioned on the register. In this last it would be surplusage to put within the parenthesis "as described on the register," because "on the register of voters for the parish of —" means exactly the same thing. With regard to the comparative convenience in practice of the two forms, there is no doubt that of the appellant is to be preferred. It enables the party objected to and the revising barrister to ascertain, by inspection of the notices and the list, without any extrinsic evidence, whether the notice is sufficient, inasmuch as under that construction it would appear the place of abode is the same as that on the register. No question at all in fact can be made as to its validity, whereas if the respondent's construction is to prevail, many questions of law will probably arise as to what is a sufficient description in the notice as to "place of abode," whether county, parish or post town is to be mentioned; and these will be the more numerous and formidable, from the uncertainty of what the object was for the insertion of the "present place of abode" as required by the act, and in all cases it must be a matter of evidence,

1845.

---

KNOWLES  
and  
BROOKING.

1845.

KNOWLES  
and  
BROOKING.

it may be of controversy before the revising barrister, whether the place of abode be truly stated in the notice. It was also suggested that the identification of the voter by his place of abode on the list was unnecessary, except in the case of two voters of the same name being on the list; but this is answered by referring to the convenience arising from the rule by the insertion of the christian name, surname and place of abode, all three may be necessary in some cases, and they are required in all for the sake of uniformity, simplicity and convenience. I think for these reasons that a due consideration of the principles of law that are applicable to the case, and the general intent of the Registration Act, and the true meaning of the particular provision that relates to the notices, tends to the conclusion that the appellant's construction is the true one, and it avoids great practical inconvenience that would arise from the adoption of that of the respondent, and consequently the decision of the revising barrister ought to be reversed.

Decision affirmed (a).

(a) This decision was held to govern also the case of *Wills v. Adey*, stated by the revising barrister for the county of Wilts.

MURRAY, *Appellant*, and THORNILEY, *Respondent*.

A voter claimed to be entitled to the franchise as grantee of a rent-charge, by deed dated January, 1845, the first payment was to become due January, 1846. Held, that he was not entitled to be registered in 1845, not having a possession within section 26 of the Reform Act.

THIS was an appeal from the decision of the revising barrister for the northern division of Cheshire.

CASE.

John Thorniley objected to the names of James Murray and William M'Connell being retained in the

to be registered in 1845, not having a possession within section 26 of the Reform Act.



list of voters for the township of Stockport, in respect of the qualification, as follows :

1845.

MURRAY  
and  
THORNILEY.

Name.	Place of abode.	Nature of Qualification.	Where situate, &c.
James Murray.	Apsley Place, Ardwick, Manchester.	Undivided share of freehold rent-charge.	Giles Bury, Joseph Bury and Thomas Steel, owners of the property out of which same is issuing, situation No. 18, Higher Hillgate, Stockport.
William M'Connell.	The Polygon, Ardwick, near Manchester.	Undivided share of freehold rent-charge.	Giles Bury, Joseph Bury and Thomas Steel, owners of the property out of which same is issuing, situation No. 18, Higher Hillgate, Stockport.

A grant and conveyance to the said James Murray and William M'Connell, and their heirs, of a rent of 6*l.* 3*s.*, issuing out of freehold land of adequate value, was produced, dated the 29th of January, 1845. This rent-charge had been created by a deed dated the 28th of January, 1845, by which it was granted as follows : " One clear yearly rent-charge, or sum of 6*l.* 3*s.*, on the 1st of January in every year, the first payment to become due and be made on the 1st of January then next ensuing."

It was objected, that a rent was an incorporeal hereditament, and as such was not capable of being possessed, except by the act of receiving ; or that, at all events, the claimants could not be said to be possessed, or in the actual receipt of the rent, until it became due ; and that, inasmuch as the first payment of the said rent would not become due until the 1st of January, 1846, the claimants had not been possessed of the hereditament, in respect of which they claimed to be registered, for six calendar months previous to the last day of July, 1845, as required by the 2 Will. 4, c. 45, s. 26. Objections.

The decision upon the whole case was that the names of the said William M'Connell and James Murray be Barrister's decision.

1845.

---

MURRAY  
and  
THORNILEY.

expunged from the list of claimants; and the decision upon the point of law in question was that the said claimants had not been possessed, or in the actual receipt of the said rent-charge, in respect of which they claimed to be registered, for six calendar months next previous to the last day of July in the present year.

Question.

If the Court should be of opinion that the said decisions were wrong, then the names of the said claimants were to be inserted on the list of voters for the said township; if otherwise, then the said appeal was to be dismissed.

*Cockburn* for the appellant. The question here turns upon the construction of 2 & 3 Will. 4, c. 45, s. 26, which provides, that "no person shall be registered in any year in respect of his estate or interest in any lands or tenements as freeholder, copyholder, customary tenant, or tenant in ancient demesne, unless he shall have been in actual possession thereof, or in the receipt of the rents and profits thereof for his own use, for six calendar months at least next previous to the last day of July in such year, which said period of six calendar months shall be sufficient, any statute to the contrary notwithstanding." The legislature obviously intended to prevent occasionality or the fraudulent manufacture of votes on the eve of an election. No corporeal possession could be taken in this case; and it is sufficient, therefore, if the grant of the rent-charge be really made six months previously, for the party then has an inchoate right to the receipt of the accruing rents, which was here an actual possession of the rent-charge within the meaning of the words in section 26, for the grant gives him all the possession which the subject-matter of the grant is

capable of; a man, indeed, can hardly be said to be out of possession of a rent-charge.

1845.

---

MURRAY  
and  
THORNILEY.

*Welsby* contra. The case shows that no rent became due in respect of the rent-charge until after the 31st of July, nor had there been anything received in the shape of rent; there has, therefore, been no actual possession of the qualification, such as will satisfy section 26 of the Reform Act. There can be no actual seisin of a rent-charge at all events until the first payment is due; indeed, there ought to be some receipt or payment on account of it. We find in *Gilbert on Rents*, p. 38, "a rent-charge and a rent-seck differ only in this, that the grantee has a remedy for the recovery of the former without an *actual* seisin, but not for the latter;" and further, in p. 108, where the author points out in what cases an assize will lie, he says, "But there must be an actual seisin of the rent in the case of rent-service to ground an assize, because this is a remedy for the restitution of the freehold of which the party once was in seisin and possession;" and he then adds, after showing that a part payment constitutes an actual seisin, "So it is in the case of a rent-seck; if the tenant pays any *parcel* of the rent to the grantee, and afterwards refuses to pay the remainder of the rent that is due, if the grantor himself or any person empowered by him demands the rent upon the land, and the tenant does not pay it, the grantee may have seisin." [*Tindal*, C. J. referred to Com. Dig. tit. "Seisin."] The same principle is laid down in Vin. Ab. tit. "Seisin," (A.) And these authorities show that an *actual* seisin is not unknown to the law; and admitting that the term "actual possession" is not the most appropriate as applicable to this matter, yet the

1845. intention of the legislature is apparent. It has been argued that an inchoate right to the rent will satisfy the statute; no such expression is made use of, or any which can bear such an interpretation.

---

MURRAY  
and  
THORNILEY.

*Cockburn* in reply. There can be no question but that there is a difference between a user in fact and in law, yet it is submitted that for the purposes of this statute the latter is sufficient. The grantor it appears by the passage from Gilbert would have had a right to distrain, and in the absence of express words it is to be presumed that such a seisin was contemplated.

*Cur. adv. vult.*

TINDAL, C. J.—In this case the claim to the right to vote was made in respect of a freehold rent-charge. The rent-charge was created by deed bearing date January 28, 1845, by which the same was made payable on the first of January in every year, the first payment to become due and be made on the first of January, 1846. The objection taken before the revising barrister was, that the claimant had no title to be put upon the register, inasmuch as he had not been in the actual possession, or in the receipt of the rents and profits for his own use for six calendar months at least, next previous to the last day of July next preceding the registration, as required by the 26th section of the 2 Will. 4, c. 45. The revising barrister allowed the objection, and directed the name of the claimant to be expunged, and after the argument which has been heard, it appears to my brothers *Cresswell* and *Erle* and to myself that the decision of the revising barrister is right. My brother *Maule*, not having been present during the whole of the argument, declines giving any opinion. It was contended

on the part of the appellant, that he had the complete right to the rent-charge from the time of the making of the deed by which it was granted, and that he had the actual possession also within the meaning of the statute, because he had all the possession of which the subject-matter is capable before the first day of payment had actually arrived. The question, undoubtedly, turns upon the meaning of the words "actual possession," and we think those words mean a possession in fact as contradistinguished from a possession in law; and that as the possession in fact of a rent-charge must be the actual manual receipt of the rent itself or some part of it, or something in lieu of it, so there could be no such possession in fact in this case, when the first payment of the rent did not become due until after the expiration of the month of July, and where nothing took place but the mere execution of the deed. There is a long course of authorities fully establishing the distinction between a possession or seisin in fact of a rent-charge, and a possession or seisin in law. Littleton, s. 235, is an authority in point: "and so it is if a man grant by his deed a yearly rent issuing out of his land to another, &c., if the grantor therefore pay to the grantee a penny or a halfpenny in name of seisin of the rent, then, if after the next day of payment the rent be denied, the grantee may have an assise, or else not," &c.: and my Lord Coke, in his commentary on this passage, is equally decisive: "By this, &c., is implied, that the grant and delivery of the deed is no seisin of the rent; and that a seisin in law, which the grantee hath by the grant, is not sufficient to maintain an assise, or any other real action, but there must be an actual seisin." And in Com. Dig. tit. "Seisin," (C. and D.), some older authorities are brought together, establishing the distinction in this

1845.

---

MURRAY  
and  
THORNILEY.

1845.  

---

MURRAY  
and  
THORNILEY.

respect between a seisin in law and a seisin in fact, or, as it is called, an actual seisin. And this appears more distinctly in the commentary of Lord Coke on the 8th section of Littleton, which relates to the doctrine of *possessio fratris*, where Lord Coke says, "What then is the law of a rent, advowson, or such things that lie in grant? If a rent or an advowson shall descend to the elder son, and he dieth before he have seisin of the rent or present to the church, the rent or advowson shall descend to the youngest son (that is by the other venter), for that he must make himself heir to his father." And, although Lord Coke then distinguishes the law as to the case of tenant by the curtesie, where, in favour of that estate the husband shall have the rent, although his wife dies before the rent day, it makes no difference as to the present argument. The actual possession of rent being therefore a well known legal phrase or expression, the legislature cannot be taken to have used it in any other than such well-known sense, that is, as contradistinguished from such possession in law, or right to the rent-charge, as the bare delivery of the deed or grant would confer. And when it is said that the authorities only show that such seisin in fact is necessary in order to maintain an assise, or make a *possessio fratris*, but that it by no means follows that it is necessary to confer a vote, the answer is, that it is a mere assumption on the part of the appellant that the expression is used in the statute in a limited and restricted sense, and, at all events, the burthen of proving this is cast upon the appellant, the statute having applied the expression to the right of the claimant to be put upon the register. And as it is quite clear that in the case of land there must be more than the execution of the conveyance,—that there must be actual possession or receipt of the

rents and profits,—there seems no reason why, in the case of an incorporeal hereditament, to which the provision of the statute equally applies, there should not be such further actual possession as the nature of the subject itself is capable of. And accordingly, by various statutes before the statute 2 Will. 4, the legislature had made a similar provision in the very same terms, for the prevention of the occasional acquirement of freeholds for the purpose of voting. Such are the 12 Geo. 2, c. 18, s. 5, requiring such actual possession for twelve calendar months before the election. Again, the 3 Geo. 3, c. 24, which, after reciting that annuities and rent-charges are of a private nature, and therefore liable to fraudulent practices in elections, enacts that no person shall vote in respect of any annuity or rent-charge, unless a certificate upon oath shall be entered twelve calendar months before the first day of the election with the clerk of the peace of the county, and a memorial also of the grant registered with the clerk of the peace for the same period of time. And, as this statute is repealed by the statute 6 Vict. c. 18, s. 72, and no other provision enacted in lieu of it, it may well be inferred that under the 2 Will. 4, c. 45, s. 26, the legislature intended something more than the mere production of the deed, by requiring actual possession for six calendar months. We therefore think the decision is right, and affirm the same.

1845.

---

MURRAY  
and  
THORNILEY.

Decision affirmed.







**AN INDEX**  
**TO**  
**THE PRINCIPAL MATTERS**  
**CONTAINED IN THIS VOLUME.**

---

**AGENT.**

*See* NOTICE OF OBJECTION, 2, 3.

**AMENDMENT.**

*See* DIFFERENT PREMISES.  
HOUSES IN SUCCESSION.  
DESCRIPTION.

*Quere*, whether a revising barrister could by sect. 40 of the Registration Act amend an insufficient description? — *Judson and Luckett*, 300.

**APPEAL.**

The Court will not allow an appeal to be entered, which has not been finally approved, (*and semble, signed also,*) by the revising barrister. — *Netsleton and Burrell*, 115.

**BARRISTER'S DECISION  
UPON FACTS.**

*See* RESIDENCE.

**BARRISTER (REVISING.)**

*See* APPEAL.  
AMENDMENT.

**BOROUGH VOTE.**

*See* "OTHER BUILDINGS."

**BUILDING USED FOR THE  
MORE CONVENIENT OC-  
CUPATION OF LAND.**

*See* "OTHER BUILDINGS."

**BURGESS OR FREEMAN.**

By sect. 32 of the Reform Act it is provided, that no person elected or admitted as a burgess or freeman since 1st March, 1831, otherwise than in respect of birth or servitude, shall be entitled to vote *as such*: Held, that the freemen and liverymen of London are not within the proviso. — *Croucher and Browns*, 236.

**CALLED UPON TO PAY.**

*See* PAYMENT OF RATE.

**CLAIM.**

*See* OCCUPATION (JOINT.)

An occupier's claim to be rated under sect. 30 of 2 Will. 4, c. 46, only applies to the rate for the time being, and the claim must be renewed upon every fresh omission. — *Wansey and Perkins*, 170.

## 346 Clerk or Servant.

### CLERK OR SERVANT.

See POSTMASTER.

### COLLECTOR OF WINDOW DUTIES.

A collector of window duties is, by sect. 2 of the stat. 22 Geo. 3, c. 41, excepted from persons disfranchised by the 1st section.—*Dyer and Gough*, 153.

### CONVEYANCES.

1. By the stat. 7 & 8 Will. 3, c. 25, "all conveyances, in order to multiply voices, or to split and divide the interest in any houses or lands among several persons to enable them to vote at elections of members to serve in parliament, are declared to be void." Held, that a conveyance is not void within this act, unless the vendor is party or privy to the illegal object.—*Marshall and Bowen*, 87.

2. A conveyance being made both on the part of vendor and vendees for the sole object of multiplying votes, but *bona fide* in pursuance of a contract of sale, where the purchase-money was really paid, and possession of the land really taken and kept, and there being no secret trust or reservation in favour of the seller, nor any stipulation as to the mode in which the elective franchise should be used, is not void within the stat. 7 & 8 Will. 3, c. 25.—*Alexander and Newman*, 277.

3. A conveyance by a father to his son, in consideration of natural love and affection, in order to qualify him to vote, is not void within sect. 7 of 7 & 8 Will. 3, c. 25.—*Newton and Hargreaves*, 298.

### COUNTY LIST.

See ABODE.

### COUNTY VOTE.

See SEVERAL HOUSES, 1.  
QUALIFICATION, 3.

### COURSE OF POST.

See DUPLICATE NOTICES OF OBJECTION.

## Duplicate Notices, &c.

### COW-HOUSE.

See "OTHER BUILDINGS."

### DESCRIPTION.

See RATE, 1.

OCCUPATION (JOINT.)

DIFFERENT PREMISES.

QUALIFICATION, 2.

1. "Queen Square" was stated on the City of London list instead of "Greenwich" as a place of abode: Held an insufficient description, which was amendable by the barrister under sect. 40 of 6 Vict. c. 18.—*Luckett and Knowles*, 257.

2. "Part of house" is a good description on the overseer's lists of the claimant's qualification within sect. 27 of Reform Act.—*Judson and Luckett*, 300.

### DIFFERENT PREMISES.

See QUALIFICATION, 2.

Where a vote is claimed for a city or borough in respect of an occupation of different premises in immediate succession pursuant to the 28th section of 2 Will. 4, c. 45, a description of all the premises occupied during the twelve months must be inserted in the list of voters, and the omission of any of them is not such a defect as the revising barrister can amend under 6 Vict. c. 18, s. 40.—*Bartlett and Gibbs*, 46.

### DISFRANCHISE.

See COLLECTOR OF WINDOW DUTIES.

### DUPLICATE NOTICES OF OBJECTION.

See POSTMASTER.

Stamped duplicate notices of objection in proper form to the voter and overseers under sects. 100 and 101 of 6 Vict. c. 18, were produced, and evidence given before the revising barrister to show that the notices were so posted as to allow of their being delivered to the parties addressed in due course of post on the 25th August (the time prescribed by sect. 7): Held, the evidence was conclusive to put the voter to prove his qualification, whe-

ther the notices were delivered or not; held also, that the regulations as to notices sent by post to persons objected to by sect. 100, are made applicable by sect. 101 to notices of objection so sent to the overseers.—*Bishop and Helps*, 220.

**ESTATE.**

*See* HOSPITAL, 2.

**PARTNERS.**

**FACTS.**

*See* QUESTION OF FACT.

**FLOORS.**

*See* OCCUPATION, 2.

1. The appellant occupied two floors of a house, in part of which the landlord resided with his family; they were rated jointly by name. The appellant had a latch-key to one lock of the street door, which was occasionally fastened by a second, and then the appellant entered the house through the shop, which was in the occupation of the landlord: Held, an insufficient occupation to confer a vote under 2 Will. 4, c. 45, s. 27.—*Pitts and Smedley*, 107.

2. The exclusive use and occupation of a separate floor or room in a factory will confer a vote upon the occupier, under sect. 27 of the Reform Act.—*Wright and Town Clerk of Stockport*, 21.

**FORM OF RATE.**

*See* INTENTION TO RATE.

**FRANCHISE.**

*See* HOSPITAL, 1.

**FRAUD.**

*See* QUESTION OF FACT.

**FREEHOLD.**

*See* HOSPITAL, 2.

**FREEMEN AND LIVERYMEN.**

*See* BURGESS OR FREEMAN.

VOL. I.—P. & R. E. C.

**GOVERNMENT.**

*See* OFFICER.

**HOSPITAL.**

1. An estate was given by will, for founding a hospital, to five trustees, who were incorporated by letters patent by the name of "The Governors of Jesus Hospital." The governors were directed to receive the rent of the estate, and pay to the principal 35*l.* per annum, and to each inmate 6*s.* per week. In accordance with the bye-laws now in force, the principal is elected by the majority of the governors, and the inmates by each governor in rotation. The principal has a house and garden within the hospital, and each inmate has a room and piece of ground for his separate use, of a value exceeding 40*s.* per annum. By the charter of incorporation, the governors for the time being have power to remove the said principal and inmates "so often as it shall seem to be convenient to them or the greater number of them." Held, that the principal and inmates take no estate of freehold, but hold merely at the discretion of the governors, and therefore are not entitled to the county franchise under 6 Vict. c. 18, s. 74.—*Davis and Waddington*, 120.

2. A hospital is governed by printed rules or ordinances made A. D. 1597, which refer to certain feoffees and their heirs, who are unknown. No deed or letters patent, &c., can be found, nor is any common seal used. No leprous person or drunkard, &c., may be admitted as a bedesman, nor can remain a member of the hospital if he become subject to such infirmities, or wilfully refuse to observe the ordinances. But there is no instance of any bedesman having been displaced. The hospital, which is a freehold building, is divided into rooms of the annual value of 4*l.*, to each of which a bedesman is appointed by persons in whom the right of nomination is vested, according to the ordinances by which the hospital is governed. Held, that a legal foundation of the hospital, not investing the bedesmen with a corporate capacity, might be presumed, and that they have such

D D

an equitable estate as entitles them to vote for the county.—*Simpson and Wilkinson*, 128.

### HOUSE.

1. The lower part of a building was used as a stable and cowhouse, over which, and communicating by a staircase, was a room (furnished) containing a fire-place and window, occupied by a servant of the claimant's agent. Held, that this is a house within the 2 Will. 4, c. 45, s. 27, and that the occupation was sufficient. Held, also, that an objection to the description of the voter's place of abode, if not taken before the revising barrister, will not be heard by the court on appeal. *Nunn and Durton*, 102.

2. The word "house," in 2 Will. 4, c. 45, s. 27, is not limited in meaning to a "dwelling-house." A building calculated for a dwelling-house, and possessing the usual conveniences of one, formerly inhabited, but now used for various other purposes, is correctly described in the qualification in the list of voters as a "house."—*Daniel and Coulstring*, 162.

### HOUSES IN SUCCESSION.

See QUALIFICATION, 2.

The qualification for a borough was two houses occupied in succession. The number of the first house was omitted from the list of voters: Held, that an objection for such omission was good. *Semble*, that the insufficient description might have been amended by the barrister under section 40 of 6 & 7 Vict. c. 18.—*Flounders and Donner*, 246.

### IDENTIFICATION.

See QUESTION OF FACT.

### INCOMPETENT TO VOTE.

See POST OFFICE.

### INHABITANT HOUSEHOLDER.

The right to vote for a borough as an inhabitant householder, which existed before the Reform Act (2 W. 4, c. 45), is only saved by sect. 33;

## Multiplying Voices.

while the original qualification is retained; and therefore where W. K. ceased to reside in the borough in which he had such a right, and went to reside elsewhere, but after an absence of fourteen weeks returned and became again an inhabitant householder of the borough: Held, that he had ceased to be qualified, and gained no new right as an inhabitant householder.—*Jeffrey and Kitchenor*, 158.

### INSUFFICIENCY.

See DESCRIPTION.

### INTENTION TO RATE.

Where an overseer has placed an occupier's name on the rate, but without the intention to rate him, the court will look to the form of the rate alone in order to construe its sufficiency, and the intention of the overseers is immaterial.—*Pariente and Luckett*, 250.

### LIST OF VOTERS.

See NOTICE OF OBJECTION, 5.

Where there is more than one list of voters, a notice of objection to the overseers must specify the list to which the objection refers, in accordance with the note to form No. 10, Schedule (B.) of 6 Vict. c. 18.—*Barton and Ashley*, 203.

### MANDAMUS.

If a revising barrister omits to state a fact in a case, because he deems it immaterial, the court have no power under sect. 65 of 6 Vict. c. 18, to remit the case to him in order to its amendment in that respect. *Quere*, If a mandamus would lie? *Semble*, per *Maule, J.*, it would.—*Hinton and Town Clerk of Wenlock*, 106.

### MISDESCRIPTION.

See NOTICE OF OBJECTION, 7.

### MULTIPLYING VOICES.

See CONVEYANCES, 1, 2.  
PURCHASE.

## Name.

## Notice of Objection. 349

### NAME.

See NOTICE OF OBJECTION, 6.

### NOTICE OF APPEAL.

See NOTICE OF CLAIM.

1. The court will not enlarge the time for giving notice of appeal to the masters, as directed by 6 Vict. c. 18, s. 62, even though an application be made for that purpose within the four first days of term.—*Simpson and Wilkinson*, 1.

2. Sect. 62 of 6 Vict. c. 18, requiring notice of appeal to the masters within the four first days of term, is not merely directory. The delivery of the notice is a condition precedent to the right of appeal, and a waiver of the objection by the respondent will not cure an omission to give it.—*Autey and Topham*, 3.

### NOTICE OF CLAIM.

A notice of claim left at the house of an overseer on the 20th July, though that day happens on a Sunday, is a good notice under sect. 4 of 6 Vict. c. 18. Held also, that where a respondent appears, the notice of appeal under sect. 64 need not be proved.—*Rawlins and Overseers of West Derby*, 229.

### NOTICE OF OBJECTION.

1. A notice of objection was signed thus: "J. G. of Poplar Grove, Didsbury, on the register of voters for the township of Manchester." Held, a sufficient compliance with the form Sched. (A.), No. 5, of 6 Vict. c. 18, and sect. 7, without stating the name of the parish in which Didsbury is situate. The same description should be given in the notice of objection as in the list of voters.—*Gadsby and Warburton*, 77.

2. A notice of objection sent by the post, pursuant to 6 Vict. c. 18, s. 100, need not have been delivered to the postmaster by the person objecting, but it is a sufficient compliance with the act if delivered by his servant or agent. And in such a case the servant or agent need not produce the dupli-

cate before the revising barrister, as it derives full credit from the post office stamp. *Cuming and Jones*, 135.

3. A stamped duplicate notice of objection was signed by an agent of the objector, but the notice sent by the post was signed by the objector himself, and both were examined by him: Held, an insufficient service of a notice of objection under section 100 of 6 Vict. c. 18.—*Toms and Cuming*, 140.

4. A notice of objection to a vote is not vitiated by the introduction of useless words into it, if the words are not calculated to mislead.—*Allen and House*, 146.

5. In Schedule (B.) to stat. 6 Vict. c. 18, a form of objection to a voter is given (No. 10), which is required to be sent to the overseers, &c., and also a form (No. 11), which is to be sent to the parties objected to. To the former is appended, "Note. If more than one list of voters, the notice of objection should specify the list to which the objection refers," &c.: Held, that the note to form No. 10 does not apply to form No. 11, and that a notice of objection need not specify to which parish list the objection relates.—*Wansey and Perkins*, 173.

6. One Nicholas, who was denominated by mistake on the list of voters as "Nickless," duly served a notice of objection signed by his right name of Nicholas; the barrister decided that the objector was so denominated in the notice of objection and list, "as to be commonly understood." Held, that it was a question of fact for his decision. *Hinton and Hinton*, 179.

7. In a notice of objection under 6 Vict. c. 18, s. 17, the objector must state his qualification with great accuracy, and as it appears on the register. When the objector described himself as "on the list of voters for the parish of C.;" whereas in fact he was on the list of freemen of the city of B., residing in the parish of C.: Held, such misdescription rendered the notice bad.—*Tudball and Burges*, 14.

8. The notice of objection sent to the party objected to and to the overseers was signed by the objector, with the addition of his true place of abode, which differed from that inserted against his name on the list of voters:

## 350 *Objection.*

Held good, *Maule, J.*, dissentiente.—*Knowles and Brooking*, 311.

### OBJECTION.

*See* HOUSE, 1.  
LIST OF VOTERS.

### OCCUPATION.

*See* HOUSE, 1.  
FLOORS.  
OFFICER OF GOVERNMENT.

1. G. B. had the exclusive occupation of two rooms in a house, of which the passage, street door, back kitchen and yard were used in common by him and the other inmates of the house. Each occupier had a key of the street door, and the landlord did not reside on the premises. Held, that G. B.'s occupation was sufficient to confer on him the borough franchise.—*Score and Huggett*, 149.

2. J. H. occupied one floor of a house, consisting of three rooms; the landlord occupied the shop and first floor, and each of them had a key of the outer door, which was kept closed: Held, that J. H. did not occupy as owner or tenant, and had no city or borough franchise within the statute 2 Will. 4, c. 45, s. 27.—*Wansey and Perkins*, 161.

### OCCUPATION (JOINT).

*See* RATE.

In a case of joint occupancy of sufficient value, it is not necessary under 2 & 3 Will. 4, c. 45, s. 29, for a claimant to state that fact: Held also, that it is not necessary, under 2 & 3 Will. 4, c. 45, and 6 Vict. c. 18, to state the nature of the voter's interest in the property for which he claims. A description of the species of the property is sufficient.—*Daniel and Camplin*, 195.

### OCCUPIERS AS TENANTS.

The premises used by the Anti-Corn-Law League were rented by J. B. and others, but the servants on the premises, as well as the rent, were paid from the funds of the association. The lessees and other mem-

## *"Other Buildings."*

bers transacted the business of the association (and the lessees their own affairs also) on the premises. Held, that the lessees were occupiers as tenants, within the 27th section of the Reform Act.—*Luckett and Bright*, 254.

### OCCUPYING TENANT.

To gain a county vote under the 20th section of 2 Will. 4, c. 45, as occupying tenant of lands or tenements, the tenant must be liable to a single rent of 50*l.* per annum to the same landlord.—*Gadsby and Barrow*, 94.

### OFFICER OF GOVERNMENT.

Where a house was occupied by an officer of government, not merely in part remuneration for his services, but with a view to the more efficient performance of the duties of his office, and subject to certain prescribed regulations: Held, that the occupation was not in such legal relation of tenant to a landlord as would confer a borough vote under sect. 27 of the Reform Act.—*Dobson, Knt. and Jones*, 65.

### OMITTING FACTS IN A CASE.

*See* MANDAMUS.

### ORIGINAL QUALIFICATION.

*See* INHABITANT HOUSEHOLDER.

### *"OTHER BUILDINGS."*

Any substantial building of the yearly value of 10*l.* adapted for habitation or carrying on business, will confer a borough vote under sect. 27 of the Reform Act, and satisfies the words "other buildings" there used. Thus a cowhouse or stable built of stone, with a tiled roof, having a door with a lock and key, and suitable for the purpose for which it was erected and used, is sufficient within the statute. *Semble*, a building used for the purpose of the more convenient occupation of land, and not for habitation or trade, would suffice.—*Whitmore and Town Clerk of Wenlock*, 17.

OVERSEER.

See LIST OF VOTERS.

PARTNERS.

Several persons purchased land whereon a fulling mill was afterwards erected and supplied with machinery by funds also subscribed by them. The land was conveyed to trustees absolutely, upon trusts declared in a deed of partnership entered into by the trustees, the claimants, and all the other partners.

By this deed it was declared that the said joint concern, trade, &c., should be carried on in the names of the trustees, and that the lands, mill, &c. &c. "*shall be deemed as in the nature of personal estate, and not real estate,*" and shall be held in trust as partnership stock in trade. The mill was worked by servants employed by a committee appointed by a general meeting of shareholders. The shareholders fulled their own cloth at the mill; and at the annual settlement of the profits of the mill, the shareholders were each debited for the amount of cloth fulled by them respectively. Strangers were allowed to full cloth at a charge, which was paid to the managing committee, and credited by them to the profits of the joint concern. Held, that the interest of the shareholders was an equitable estate in realty, and conferred a vote on them. The trustees had, under the power of their partnership deed, borrowed sums of money for the purposes of the mill, for which they had given bonds and notes in their own names.

Held, that the money so borrowed on notes and bonds had not the effect of a mortgage of the shares.—*Baxter and Newman*, 182.

PAYMENT OF RATE.

See FLOORS, 2.

TENANT.

The occupier of a house, No. 3, was rated for it, but by mistake, as No. 4: Held, that he was *bond fide* called upon to pay the rate within sect. 75 of 6 Vict. c. 18: Held also, that a payment of the rate by the landlord, in

pursuance of an agreement between him and the tenant, in consideration of an increased rent, was a payment by the tenant.—*Cook and Lockett*, 241.

PLACE OF ABODE.

1. A voter's "place of abode" was described on a county list as "travelling abroad:" Held sufficient.—*Walker and Payne*, 207.

2. The description of an objector's place of abode in his notice of objections need not be precisely similar with that on the register. The former gave the address with more particularity than the latter. Held good.—*Pruett and Cox*, 214.

POSSESSION.

A voter claimed to be entitled to the franchise as grantee of a rent-charge, by deed dated January, 1845, the first payment was to become due January, 1846: Held, that he was not entitled to be registered in 1845, not having a possession within sect. 26 of the Reform Act.—*Murray and Thorniley*, 336.

POSTMASTER.

The duties of a postmaster in receiving, comparing and stamping duplicate notices of objection pursuant to the 100th section of 6 Vict. c. 18, may be performed by his clerk or servant acting at the office.—*Allen and Waterhouse*, 58.

POST OFFICE.

See NOTICE OF OBJECTION, 2.

A. had, within twelve months before the last day of the preceding July, held office under the postmaster-general, and was thus by stat. 22 Geo. 3, c. 41, s. 1, rendered incompetent to vote on that day: Held, that the revising barrister, on proof thereof at the next revision of the list, was bound to expunge his name, under 6 Vict. c. 18, s. 40.—*Cooper and Harris*, 100.

PRESUMPTION.

See HOSPITAL, 2.

**PURCHASE.**

A purchase of property by persons whose object was to multiply voices, but which object was unknown to the vendor, though it was acquiesced in by his solicitor, is not within the 7 & 8 Will. 3, c. 25.—*Hoyland and Bremner*, 265.

**QUALIFICATION.**

1. A qualification in respect of an undivided moiety in two houses, which had neither name nor number, was described in the list of voters as "Undivided moiety in two freehold houses in Tinker Lane, Hollingwood:" Held a sufficient compliance with the 6 Vict. c. 18, s. 4, and the form No. 2, Schedule (A.), without stating the names of the occupying tenants.—*Eckersley and Barker*, 82.

2. Where the qualification was in respect of two houses occupied in succession, a notice to the overseer, describing the nature of qualification in the third column as "house," and giving a sufficient description of both houses in the fourth column, was held a sufficient notice.—*Hitchins and Brown*, 209.

3. The poor pensioners of a hospital (erected in pursuance of a will, and regulated by a private act of parliament) were actually in receipt of 10s. per week, and certain coals and clothing, subject, however, by the terms of the said act of parliament, to be reduced to not less than 3s. 6d. per week by the trustees (having regard to the revenues of the hospital). To the latter sum, as well as the coals and clothing, the poor pensioners were absolutely entitled. But the court found that the latter would not be sufficient to confer the franchise. Held, that they had no franchise.—*Ashmore and Lees*, 267.

**QUESTION OF FACT.****See NOTICE OF OBJECTION. 6.**

1. Whether property is sufficiently described on the register, for the purpose of being identified under sect. 40 of stat. 6 Vict. c. 18, is a question of fact for the decision of the revising barrister, and this court will not re-

view his decision upon appeal.—*Wood and Overseers of Willesden*, 216.

2. Where no question of law is stated for the opinion of the court, but the case merely discloses the facts on which the barrister has decided, the court will not interfere.—*Coogan and Luckett*, 294.

3. The court will not inquire whether the circumstances attending a conveyance or grant amount to fraud, as it is a fact for the revising barrister to determine.—*Newton and Hargreaves*, 298.

**RATE.****See CLAIM.****FLOORS, 2.**

1. J. B. M. and W. M. were joint occupants of property in a city. For two out of three rates J. B. M. was not named in the rate, but W. M. alone. All three rates were paid by J. B. M. The overseers were not aware at the time of making or receiving the two first rates that J. B. M. was a joint occupier of the property: Held, that J. B. M. was not qualified to vote; that the omission of his name from the two rates was not merely an inaccurate description, and that he had not been bona fide called upon to pay them within 6 Vict. c. 68, s. 75.—*Moss and Overseers of St. Mary, Lichfield*, 116.

2. J. B., an occupier, not being rated, applied to the overseer under section 30 of the Reform Act, to know whether any rates were due; and being told by the overseer that he did not know, added, "If there are, I am prepared to pay them." The overseer said "I will see to it." No further inquiry was made, and the matter dropped: Held, that this was no tender in compliance with the above section. *Sembla*, per *Maule, J.* The tender need not be so strictly precise as to support a plea.—*Bishop and Snedley*, 233.

3. Until a new rate is allowed and published, the last valid and effectual rate continues to be the rate "for the time being" for the purpose of a claim to be rated under section 30 of the Reform Act.—*Bushell and Luckett*, 260.

4. Where the landlord is rated for the house, and the occupier's name



stands on the rate next in order, but unconnected with a bracket, and with no description of property carried out against it: Held, sufficient rating of the occupier.—*Judson and Luckett*, 300.

5. A rate duly made in manner and form, having the name of the occupier, the premises for which he is rated, and the rateable value thereof, and the amount of rate, is a sufficient rating within the 6 Vict. c. 18, s. 75.—*Wright and Overseers of Stockport*, 21.

6. When parties are jointly rated, a payment of the whole rate by one is a payment by each.—*Ibid*.

**REMITTING CASE.**

*See* MANDAMUS.

**RENT.**

*See* OCCUPYING TENANT.

**RENT-CHARGE.**

*See* POSSESSION.

**RESIDENCE.**

The residence required by the stat. 2 Will. 4, c. 45, to entitle a person to be registered as a freeman of a city or borough, must be an actual occupation (*animo residenti*) by himself or his family, or servants; and, *semble*, the revising barrister's decision upon facts is conclusive, unless the latter are necessarily inconsistent with it. Per *Maule, J.*—*Withorn and Town Clerk of Tewkesbury*, 109.

**SEVERAL HOUSES.**

1. H. was lessee of several houses within the borough of Birmingham for a term originally exceeding sixty years; one of the houses was of the yearly value of 10*l.*, the others were respectively worth less, but collectively exceeded that sum. For the house worth 10*l.* per annum he had a vote for the borough: Held, that in respect of the others he was entitled to a county vote by sect. 20 of the Reform Act, and that sect. 25 did not affect such claim.—*Webb and Overseers of Aston*, 5.

2. Several "houses, warehouses, counting-houses, shops or other buildings," not separately of the value of 20*l.*, but in the aggregate of a greater value, do not entitle joint occupiers to a borough vote, under sect. 27 of the Reform Act.—*Dewhurst and Fielder*, 166.

**SEPARATE FLOORS OR ROOMS.**

*See* FLOORS, 2.

**SEPARATE VALUE.**

*See* SEVERAL HOUSES, 2.

**SERVANT.**

*See* TENANT.

**SIGNATURE.**

*See* NOTICE OF OBJECTION, 3.

**STAMP.**

*See* NOTICE OF OBJECTION, 2.

**STATEMENT OF QUALIFICATION.**

*See* NOTICE OF OBJECTION, 7.

**SUNDAY.**

*See* NOTICE OF CLAIM.

**TENANT.**

*See* OFFICER OF GOVERNMENT.

A servant who occupies a house in part remuneration for his services, and not merely for the better performance of them, is entitled to a vote under sect. 27 of the Reform Act, as *tenant* to his master. When also rates are paid in part remuneration for service, it is immaterial whether the payment is made by the landlord or tenant for the purpose of conferring a right to vote on the latter.—*Hughes and Overseers of Chatham*, 35.

**TENANT AND LANDLORD.**

*See* OFFICER OF GOVERNMENT.

**TENDER.***See RATE, 2.***YEARLY VALUE.**

1. By "clear yearly value" is meant the sum which a tenant would pay for rent, deducting the amount of burdens

which he would fairly be called upon to pay.—*Coogan and Luckett*, 294.

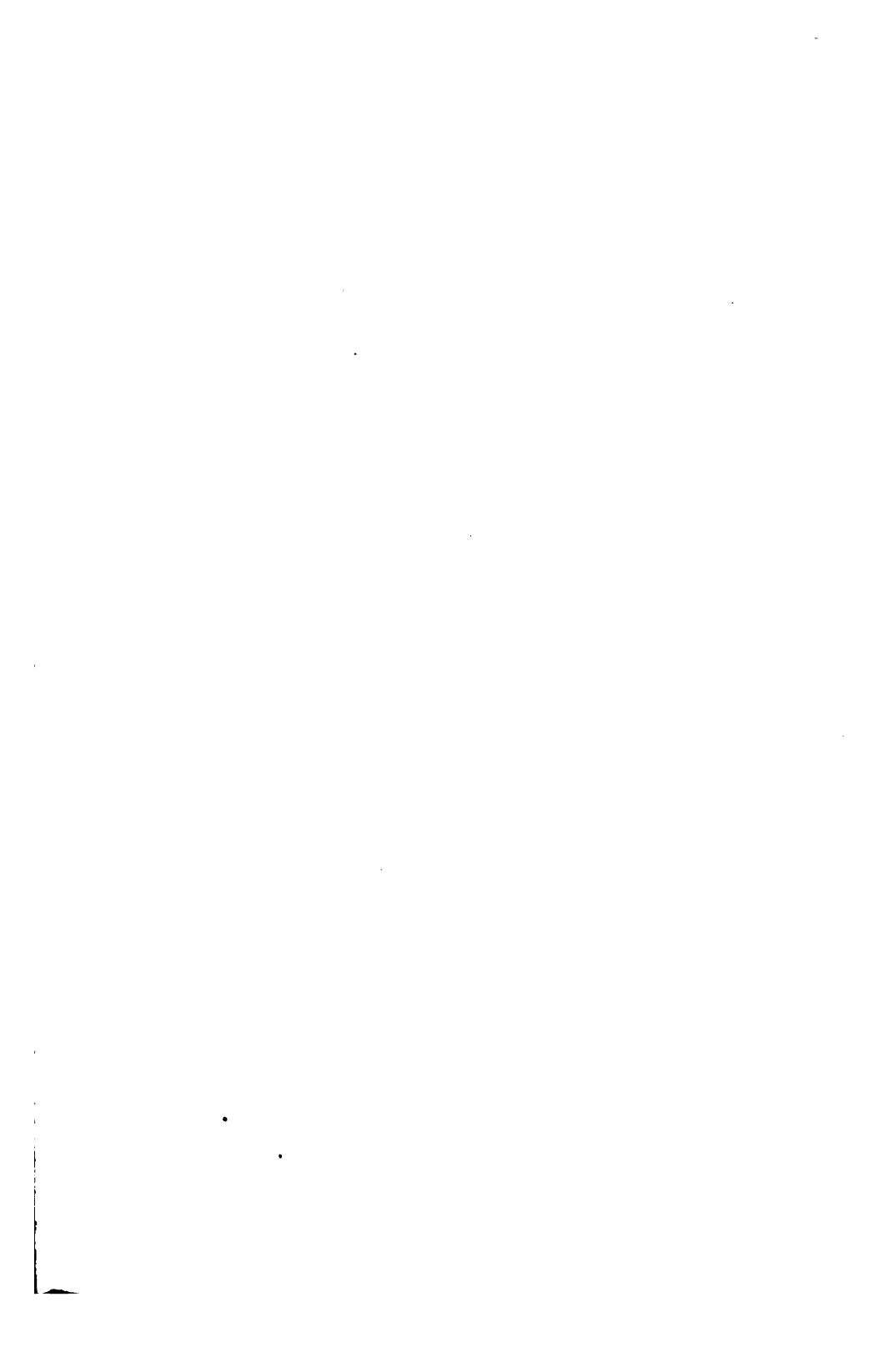
2. If a house is fairly worth 10*l.* per annum to a tenant to rent, the occupation of it is "of the clear yearly value of not less than 10*l.*," within the meaning of sect. 7 of the Reform Act.—*Colvill and Wood*, 305.

**END OF THE VOLUME.**

**LONDON:**

PRINTED BY C. ROWORTH AND SONS, BELL YARD,  
TEMPLE BAR.





JSN JAP OTK  
Reports of cases decided in th  
Stanford Law Library



3 6105 044 648 462